Supreme Court, U.S.
FILED
05-637 NOV 14 2005
OFFICE OF THE CLERK

No.

In The

Supreme Court of the United States

IRENE L. STEPHENS,

Petitioner,

vs.

GEORGIA DEPARTMENT OF TRANSPORTATION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE ELEVENTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

Irene L. Stephens
Petitioner, In Propria Persona
1409 Back Cove Road
Virginia Beach, VA 23454
(757) 332-0636

QUESTIONS PRESENTED

1. Whether when a state agency acting in a judicial capacity resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, will Georgia federal courts in actions under the Reconstruction civil rights statutes must give the agency's factfinding the same preclusive effect to which it would be entitled in the State's courts in the Sixth Circuit.

2.Whether, under the circumstances, evidence and facts of the case, would O.C.G.A § 34-8-223(a) and/or O.C.G.A. § 34-8-223(b) provide an exception to Title 28 U.S.C. § 1738.

3. Whether the district court failed to adjudicate the petitioners case and claims properly.

4.Whether the district court was require to honor the judicial determination as made and rendered by the Georgia Department of labor against the Respondent in the Petitioner's favor.

5. Whether the Eleventh Circuit Court of Appeals should have reversed the judgment of the district court.

LIST OF INTERESTED PARTIES

Pursuant to Rule 14.1(b) of the Supreme Court Rules, Irene L. Stephens, hereby identifies those persons, associations of persons, or other entities that are, or may be interested in the outcome of this case.

Angela Woodliff

Bernice Williams-Kimbrough

Bryan Keith Webb

Hon. C. Ray Mullins
United States Bankruptcy Court Judge

Cheryl Davis

Courtroom Sciences, Inc. d/b/a CSI

Dana R. Russell

Darrell Williams

Dennis Robert Dunn

Donald LaFrenier

G. Melton Mobley, Jr.

Georgia Department of Transportation
Party to petition

Gordon L. Joyner

Greenspring of Georgia

Greenspring Health Services, Inc.

Harold Linnenkohl

Irene L. Stephens, Party to petition

J. Tom Coleman

Hon. James E. Massey
United States Bankruptcy Court Judge

LIST OF INTERESTED PARTIES

Jack Rosenberg

Joseph Couch

Kathryn Lloyd Allen

Lokey, Mobley & Doyle, L.L.C.

Hon. Lois Oakley
Chief Administrative Law Judge
Office of State Administrative Hearings

Hon. Thomas Kahn
United States Court of Appeals Clerk

Magellan Behavorial Health

Majorie H. Young

Margaret L. Kinnear

Hon. Mary A. Smith
Administrative Hearing Officer
Georgia Department of Labor

Michael L. Thurmond

Paul V. Liles, Jr.

Hon. Richard W. Story
United States District Court Judge

Rachel Brown

Hon.Roy E. Barnes

State of Georgia

Stefan Ernst Ritter

Stephen Henry

Stephen J. Sampson

LIST OF INTERESTED PARTIES

Thurbert E. Baker

Velvia Caldwell

Wayne Shackelford

William O. Dunn

Hon. Tjoflat
United States Court of Appeals for the Eleventh Circuit

Hon. Anderson
United States Court of Appeals for the Eleventh Circuit

Hon. Dubina
United States Court of Appeals for the Eleventh Circuit

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Decision by Eleventh Circuit Court of Appeals Denying Motion for Rehearing and Rehearing En Banc .. Vol. I, App. III

The United States District Court for the Northern District of Georgia rendered decision in favor of the Respondents against Petitioners Title 42 U.S.C § 1983 claim against the Respondents dated April 23, 2004[1]. . . Vol. II Decision

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1. Pursuant to Supreme Court Rule 14, 1(h)(i) the Petitioner apologizes that she should have included the Order by District Court Granting Judgment to the Respondent against Petitioner dated April 23, 2004 as Vol I, App. IV verses Vol. II.

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To the Supreme Court of the United States:

Comes now Irene L. Stephens, the Petitioner in this case, and files this Petition for Writ of Certiorari.

OPINION BELOW

The decision rendered by the Eleventh Circuit Court of Appeals denying Petitioner's request for review and reconsideration and en banc determination (App., Vol.I, App. I)

The decision rendered by the Eleventh Circuit Court of Appeals affirming the judgment of the district court (App. , Vol.I, App. II)

The decision rendered by the Eleventh Circuit Court of Appeals denying Petitioner's request for review and reconsideration and en banc determination (App., Vol.I, App. I)

The United States District Court for the Northern District of Georgia rendered a decision for the Respondents against Petitioner (App., Vol.I, App. III)

The United States District Court for the Northern District of Georgia rendered a decision in favor of the Respondents against Petitioners Title 42 U.S.C § 1983 claim against the Respondents (App., Vol.II)

Opinion of the Administrative Hearing Officer Dated July 16, 2001. Appendix , Vol.I, App. IV

Opinion of the State of Georgia, Department of Labor,

Office of the Board of Review, Suite 801, 148 International Boulevard N.E., Sussex Place, Atlanta, Georgia, Dated September 11, 2001. (Appendix , Vol.I, App. V)

STATEMENT OF JURISDICTION

The judgement of the Eleventh Circuit Court of Appeals in Atlanta, Georgia was entered on May 31, 2005. Petitioner sought a timely rehearing of the decision by the panel and sought an en banc determination which was denied on August 17, 2005.

Jurisdiction of this Court is founded on 28 U.S.C. § 1257. Under Rule 10 of the Supreme Court Rules, this Court should grant this Petition. It is the Petitioner's position that there is precedent for this Court to grant the Petitioner's Petition for Writ of Certiorari. The decision of the United States District Court and the Decision of the United States Court of Appeals for the Eleventh Circuit at Atlanta, Georgia in the instant case has now resulted is a conflict of common law the United States Court of Appeals for Third Circuit at Philadelphia, Pennsylvania and the United States Court for Eleventh Circuit involving federal civil rights cases. The United States Court of Appeals for the Third Circuit decided the precedential case of **United States of America v. Thomas Smith, Brian Smith, Andrew Garth, Tyrone Payton, Paul Carpenter, Jr.**, 294 F.3d 473 (3rd Cir. 2002). Sometime during the year 2005, the media reported that the former Orange County, New Jersey police officer Mr. Andrew Garth lost a federal trial by jury in the State of New Jersey and was sent to federal prison for violations of Mr. Earl Faison's civil right under and pursuant to Title 18 U.S.C. § 241 and substantive crimes against Mr. Earl Faison under and pursuant to Title 18 U.S.C. § 242. Mr. Garth was relieved of his official duties as a police officer by the Orange County police department, at some point later Mr. Garth appealed the adverse employment action and subsequently was denied unemployment insurance benefits, i.e. Mr.Garth lost his employment appeal case. It is the Petitioner's contention that there

is a conflict of common law between the United States Court of Appeals for Third Circuit and the United States Court for Eleventh Circuit. In the Third Circuit, Mr. Garth lost his employment appeal case and he was eventually found guilty of federal civil rights violations and substantive crimes under the most stringent evidence standard. While the Petitioner in the instant case prevailed at her state administrative hearing i.e. she won her employment appeal case and did not prevail in her federal civil rights case in the lower federal courts located in the State of Georgia.

Moreover, the Honorable Court has recently granted certiorari in the case of **Marshall v. Marshall** from the United States Court of Appeals for the Ninth Circuit in San Francisco, California . The **Marshall** case was docket as Supreme Court Case. No. 04-1544. The **Marshall** case involved conflicting judgments that decided the claims of the surviving spouse between three courts: the United States District Court, the United States Bankruptcy Court an the Texas Probate Court. The United States Court of Appeals for the Ninth Circuit reversed all judgments awarded to the surviving spouse by the bankruptcy and district courts located in the State of California. If the Honorable Court should reverse the decision of the Ninth Circuit Court of Appeals in **Marshall**, the Ninth Circuit opinion will be consistent with the common law of the Third Circuit opinion in **United States v. Andrew Garth, et al**. However, Petitioner respectfully advances that the Eleventh Circuit Court of appeals is taking an inapposite view common law than that of the United States Court of Appeals for the the Third Circuit and possibly the Ninth Circuit. It is the Petitioners position that the surviving spouse in **Marshall** cannot lose trial by jury in the State of Texas and prevail in federal courts in California. Likewise, while Mr. Garth lost a state administrative proceeding and would later be found guilty in a New Jersey federal district court of federal civil rights violations and federal substantive crimes, while the petitioner in the instant case prevailed at her state administrative hearing and did not prevail in her federal civil rights case at the federal courts below.

Moreover, Petitioner respectfully advance her contention that the Georgia federal court's in this case have completely ignored the ultimate power and authority of this courts decisions as the law of the land as directly relating and rendered in the decision of **University of Tennessee v. Elliot** when the Court held:

"However, when a state agency acting in a judicial capacity resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, federal courts in actions under the Reconstruction civil rights statutes must give the agency's factfinding the same preclusive effect to which it would be entitled in the State's courts (a matter for resolution on remand here). In enacting those statutes, Congress did not intend to create an exception to general rules of preclusion, or to foreclose the adaptation of those rules to such subsequent developments as the use of administrative adjudication. Giving preclusive effect in federal courts to the factfindings of state administrative bodies acting in a judicial capacity serves both the value of enforcing repose, which underlies general principles of collateral estoppel, and the value of federalism. Quoting **University of Tennessee v. Elliot**, 478 U.S. 788, 789 (1986).

Unfortunately, Petitioner respectfully adva ce the Georgia federal court decisions as render in the instant case has now resulted in a direct split in law of this land between the United States Court of Appeals for the Sixth Circuit of Cincinnati, Ohio and Eleventh Circuits. Moreover, the federal courts in Georgia have negated the ultimate authority and power of the Honorable Court.

The petitioner respectfully advances the District Court and Eleventh Circuit Court of Appeals in Atlanta, Georgia cannot, in the instant case, fashion their own remedies but instead must apply the common law of State of Georgia under the principles of stare

decisis and precedent, as well as its statutory and constitutional law. Petitioner's respectfully advances that there is precedent for this Honorable Court to grant the Petitioner's Petition for Writ of Certiorari when the Supreme Court presumes that Court of Appeals decide questions of state law correctly, but that presumption is inapplicable if the Court of Appeal was "plainly wrong." **Leavitt v. Jane L.**, 520 U.S. 164 (1994)

Moreover, the Honorable Court may retain jurisdiction to determine if the Honorable Court has jurisdiction. See **United States v. United Mine Workers**, 330 U.S. 258, 291 (1947), **Mansfield Coldwater & Lake Michigan Ry. Co. v. Swan,** 111 U.S. 379, 387 (1884). The instant case involves interpretation of the constitution, so it can only be altered by an amendment to the Constitution or change in the Honorable Courts position. See **Seminole Tribe v. Florida**., 517 U.S. 44 (1996).

CONSTITUTIONAL PROVISIONS INVOLVED

Article I Section 10, United States Constitution —

> ***No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, expost facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.***
>
> ***No State shall without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of***

the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay and Duty of Tonnage, keep Troops, or ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Article 4 Section 1, United States Constitution

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Amendment IV, United States Constitution —

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V, United States Constitution —

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except

in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall he be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VII, United States Constitution —

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

Amendment XIV, Section 1,
United States Constitution —

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Amendment XIV, Section 5,
United States Constitution —

The Congress shall have power to enforce this

article by appropriate legislation.

STATEMENT OF THE CASE

A. Course of Proceedings & Disposition of the Case Below

On July 6, 2001, pursuant to O.C.G.A.§ 34-8-220(b) Judge Smith held a formal hearing for Petitioners appeal from the earlier decision as a Georgia Department of Labor field office.

On June 15, 2001, the Petitioner pursuant the First, Fifth and Fourteenth to the United States Constitution and Title 42 U..S.C. § 1983 requested relief from the Equal Employment Opportunity Commission and the Georgia Division of the E.E.O.C.

On July 16, 2001 the Honorable Mary A. Smith, ruled that the Respondent's termination of the Petitioner was in wilful violation of Petitioner's rights and protections pursuant to Rule 15 of the Rules and Regulations of the State Personnel Board for the State of Georgia. Petitioner was terminated without just cause and in violation of Rule 15 of the Rules and Regulations of the State Personnel Board for the State of Georgia.

On September 11, 2001, Pursuant to O.C.G.A.§ 34-8-221 et seq., the State of Georgia, Department of Labor, Office of the Board of Review adopts the administrative hearing officers finding.

On June 11, 2002, the Petitioner pursuant to Title 42 U.S.C. § 1983 and requested relief from United States District Court for the Northern District of Georgia, Atlanta Division against the Respondent.

On April 23, 2004, Order by district court granting Judgment to the Respondent against Petitioners Title 42 U.S.C § 1983 claim.

On July 20, 2004, Order by district court granting Judgment to the Respondent against the Petitioners Title VII

claims.

On August 19, 2004, Petitioner tendered a timely Notice of Appeal to the United States Court of Appeals for the Eleventh Circuit.

On May 31, 2005, the Eleventh Circuit Court of Appeal ruled in favor of the Respondent.

On August 17, 2005 Respondent tendered a timely motion for review and reconsideration which was denied.

B. Statement of Facts

While Petitioner resided in Virginia Beach, Virginia, Petitioner came across an employment ad relating to the Georgia Department of Transportation (hereinafter referred to as "Respondent").

The ad offered permanent employment as a transportation engineer, with a beginning salary of $29,238.00, plus benefits. The Petitioner's job title was designated as a transportation engineer associate. At the time of the instant ad, Petitioner had graduated Old Dominion University with Bachelor of Science Degree in Civil Engineering.

Petitioner contacted the Respondent, by and through the Respondent's authorized agent, Ms. Kim Cameron, a GDOT employment recruiter, in Atlanta, Georgia. An employment interview was scheduled and Petitioner traveled to Atlanta, Georgia. After meeting with Ms. Cameron, in Atlanta, Petitioner tendered an employment application for employment as an transportation engineer associate with the Respondent. The Respondent, upon reviewing Petitioner's qualifications, requested that the Petitioner return to Atlanta for a second interview by Irene Belinfante, P.E., John Tiernan, and Paul Liles, Jr., which resulted in a letter of notification that the Respondent had chosen to deny Petitioner the employment position as advertised.

Notwithstanding the fact that the Respondent had denied the Petitioner's employment application, Petitioner received a telephonic communication to come back to Atlanta for another

interview for the same position which Petitioner had been previously turned down for. On the morning of the date of the second interview, as Petitioner was preparing to leave to take an airline flight to Atlanta, Petitioner received another telephonic communication that the interview had been canceled.

Petitioner thereinafter telephonically contacted Ms. Cameron and still expressed interest in an engineering position with the Respondent when and if one opened up. Ms. Cameron thereinafter contacted Petitioner about another engineering opening which had open and another interview was scheduled and Petitioner, once again traveled to Atlanta, Georgia for a second interview for an engineering position with the Respondent. This third interview took place with Kevin Vinson and Tim Rader relating to an employment position as an engineering technician. Petitioner accepted the employment position and when Petitioner traveled to Atlanta to commence Petitioner's employment with the Respondent, Petitioner was placed in a management position as a transportation engineer versus an engineering technician.

At all times, Respondent's employment offers to the Petitioner was that of a permanent employee and when Petitioner commenced working for the Respondent, the Respondent's authorized agent provided Petitioner with a copy of the 1994 Employee Handbook and told that said document contained all employment rights and benefits which the Respondent was retaining the Petitioner under and pursuant to the Petitioner's employment with the Respondent. Under and pursuant to the 1994 Employee Handbook, Petitioner was considered and employed by the Respondent as a permanent employee under and pursuant to Rule 15 of the Rules and Regulations of the State Personnel Board for the State of Georgia.

On April 1, 1999, Petitioner began employment, with the Respondent. Respondent also laterally assigned the Petitioner to a two-year training program Petitioner while employed with the Respondent had no routine work assignment.

Petitioner requested a job transfer to work in the Office of Bridge Design, however, Petitioner was illegally and

discriminatory terminated by the Respondent. As a permanent employee, Petitioner sought relief before the Georgia Department of Labor.

During November 2000, Stephens requested a job transfer to work in the office of Bridge Design, On or about November 30, 2000, Respondent's employee Ms. Velvia Caldwell makes false accusation against Petitioner , that Petitioner called Caldwell and Petitioners supervisors "those coon bastards".

On December 7, 2000, the Respondent's employee Mr. Darrell Williams provides petitioner with an absolute implicit waiver from the Respondent for any and all alleged faults of Petitioner by ordering Petitioner to drive Respondents vehicle to a highway construction project and work for approximately four (4) hours, with the Respondents employees Ms. Velvia Caldwell, Mr. Stephen Henry, Ms Rachel Brown, Ms. Cheryl Davis, and Mr. Donald LaFrenier. Mr. Darrell Williams thereby reinstating Petitioners employment. At approx. 1:30 P.M., Mr. Henry, orders Petitioner to leave the job site and go home, thereby rescinding Petitioners employment. Mr. Henry, inexplicably reinstates Petitioners employment for December 8, 2000 asking Petitioner to attend a meeting with Mr. Williams on December 8, 2000 and after the conclusion of the meeting with Mr.Williams, Mr. Williams would drive Petitioner for an appointment with Stephen J. Sampson, CSI psychologist for an alleged "stress test". Mr. Henry all the while knowing that Mr. Williams had just provided Stephens with a implied waiver for all alleged acts, actions and behavior of Petitioner which was the alleged basis for the "stress test". Moreover, on December 7, 2000, Ms. Rachel Brown rescind Petitioners employment by issuing "Recommendation for disciplinary action" all the while knowing that Mr. Williams had just provided Petitioner with a absolute implied waiver and Mr. Henry allegedly had reinstated Petitioners employment for December 8, 2000.

On December 11 and December 12, 2000 Stephens was illegally and indiscriminately terminated by Stephen Henry via two (2) letters delivered to Stephens from Stephen Henry by United

States Mail. Respondent illegally terminated the petitioners employment. As a permanent employee, Petitioner sought relief before the Georgia Department of Labor.

On or about February 11, 2001, Petitioner telephonically applied for unemployment benefits with the Georgia Department of Labor against the Respondent .and was denied the same.

On July 6, 2001, pursuant to O.C.G.A.§ 34-8-220(b) Judge Smith held a formal hearing for Petitioners appeal from the earlier decision as a Georgia Department of Labor field office.

On June 15, 2001, the Petitioner pursuant to Title 42 U.S.C. § 1983 and the First, Fifth and Fourteenth to the United States Constitution and Title 42 U..S.C. § 1983 requested relief from the Equal Employment Opportunity Commission and the Georgia Division of the E..E.O.C.

On July 16, 2001 Honorable Mary A. Smith, of the Georgia Department of Labor ruled that the Respondent's termination of the Petitioner was in wilful violation of Petitioner's rights and protections pursuant to Rule 15 of the Rules and Regulations of the State Personnel Board for the State of Georgia. Petitioner was terminated without just cause and in violation of Rule 15 of the Rules and Regulations of the State Personnel Board for the State of Georgia.

On September 11, 2001, Pursuant to O.C.G.A.§ 34-8-221 et seq., the State of Georgia, Department of Labor, Office of the Board of Review adopts the administrative hearing officers finding. The Respondent ***never*** appealed that decision.

On June 11, 2002, the Petitioner Pursuant to Title 42 U.S.C.§ 1983 et seq. filed a timely civil rights complaint within the time allotted in the United States District Court for the Northern District of Georgia, Atlanta Division

On April 23, 2004, Order by district court granting Judgment to the Respondent against Petitioners Title 42 U.S.C § 1983 claim notwithstanding un-refutable evidence of judicial determination, as rendered by the Georgia Department of Labor that Petitioner's employment termination was not proper and/or valid.

On July 20, 2004, Order by district court granting Judgment to the Respondent against the Petitioners Title VII claims.

On August 19, 2004, Petitioner tendered a timely Notice of Appeal to the United States Court of Appeals for the Eleventh Circuit.

On May 31, 2005, the Eleventh Circuit Court of Appeal ruled in favor of the Respondent.

On August 17, 2005, the Eleventh Circuit Court denied Petitioner's Motion for Rehearing.

ARGUMENT AND AUTHORITIES

The totality of the Respondent's defensive claims were legally destroyed prior to the filing of the Petitioner's reconstruction civil rights complaint, by and through the formal decision, as rendered by the Georgia Department of Labor.[2]

The issue of the *Rooker-Feldman* Doctrine was never raised by the Respondents in the district court. Nor did the district court render any judgment based upon the *Rooker-Feldman* Doctrine.

Petitioner respectfully avers that the decision by the Eleventh Circuit Court of Appeals not to apply the *Rooker-Feldman* Doctrine to the instant case as controlling is wrong.

Petitioner would respectfully aver that the decision by the Eleven Circuit Court of Appeals in the instant case is in conflict with its previous decisions in the case of **Aubrey S. Whelchel v. City of Covington, Georgia, et al.**, See Appendix Vol. III, App. XII and App. XIII

It should be noted that the Respondent City of Covington,

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2. **District of Columbia Court of Appeals v. Feldman**, 460 U.S. 462, 103 S.Ct. 1303, 1317 (1983); **Rooker v. Fidelity Trust Co.**, 263 U.S. 413, 414, 44 S Ct. 149, 150 (1923); **Harris v. Zion's Sav. Bank or Trust Co.**, 317 U.S. 447, 450-53 (1943), **University of Tennessee v. Elliot**, 478 U.S. 788, 789 (1986).

nor the district court raised or held that the Petitioner's civil rights case was foreclosed by application of the *Rooker-Feldman* Doctrine. The *Rooker-Feldman* Doctrine appeared sua sponte by the Eleventh Circuit Court of Appeals panel in **Whelchel** advancing the *Rooker-Feldman* Doctrine was applicable And the district court in the Petitioners case did not address the Rooker-Feldman Doctrine.

The *Rooker-Feldman* doctrine provides that the lower federal courts lack subject matter jurisdiction over a case if the exercise of jurisdiction over that case would result in the ***reversal or modification of a state court judgment***. Such jurisdiction is lacking because within the federal system, only the Supreme Court may review a state court judgment.

The first case to identify this principle was **Rooker v. Fidelity Trust Co.**, 263 U.S. 413, 44 S Ct. 149 (1923). There, the plaintiff sought a declaration from the federal district court that a judgment of the Indiana state court was null and void because it violated the Contracts Clause. Id. at 414-15, 44 S. Ct. at 150. Interestingly, the plaintiff had petitioned the Supreme Court for direct review and been denied, so that the suit represented an end run around direct review. Id. at 414, 44 S. Ct. at 150. In holding that the district court lacked jurisdiction over the case, the Supreme Court stated that "[under the legislation of Congress, no court of the United States other than this court could entertain a proceeding to reverse or modify the judgment for errors of that character." Id. at 416, 44 S.Ct. at 150.

In 1938 this Court proclaimed, "there is no general federal common law." **Erie Railroad Co.v Tompkins**, 304 U.S. 64 (1939).

Sixty years passed before the Supreme Court revisited **Rooker**, and when it did, it was concerned with the deference owed to the local courts of the District of Columbia rather than a state. In **District of Columbia Court of Appeals v. Feldman**, 460 U.S. 462, 103 S Ct. 1303 (1983), plaintiffs brought separate actions challenging the validity of a rule of the District of Columbia that prevented them from sitting for the District's bar exam. Feldman

decided that whether a federal challenge is foreclosed depends in part on whether the state proceedings were "judicial in nature." Id. at 476, 103 S Ct. at 1311. The Supreme Court drew a distinction – potentially critical in the present case – between a challenge to the rule governing bar admission and a challenge to a judgment of a state court applying that rule. Because promulgation of a rule is a non-judicial act, a federal court would have jurisdiction over a general challenge to state bar rules. Id. at 485-86, 103 S Ct. at 1316-17. By the same token, a federal court would lack jurisdiction over challenges to state court decisions in particular cases arising out of judicial proceedings, even if those challenges allege that the state court's action is unconstitutional. Id. at 486, 103 S. Ct. at 1317. The Feldman Court further noted that a federal court lacks jurisdiction over any claims that are "inextricably intertwined" with a state court's determinations in a judicial proceeding. Id. at 482 n. 16, 103 S Ct. at 1315 n. 16.

Moreover, The Eleventh Circuit in **Powell v. Powell**, 80 F.3d 464 (11th Cir. 1996), ruled that granting Mr. Powell relief would "effectively nullify" the state court's judgment and therefore holding that because district court holding would "effectively reverse the state court judgment," the federal claim was "inextricably intertwined" with the state court judgment and the result would be that the state court's judgment would be collaterally reviewed and reversed in federal court, which is precisely what the *Rooker-Feldman* doctrine exists to prevent. See **Liedel v. Juvenile Court of Madison County**, 891 F.2d 1542, 1545 (11th Cir. 1990); see also **Stern v. Nix**, 840 F.2d 208, 211-12 (3rd Cir.), cert. denied, 488 U.S. 826, 109 S Ct. 77, 102 L Ed.2d 53 (1988).

This Court has said in the case of **Harris v. Zion's Sav. Bank & Trust Co.**, 317 U.S. 447, 450-53 (1943)("The probate court, not the bankruptcy court, is the appropriate forum for weighing the respective benefits or detriments to those who share in the equity of the decedent's estate."). The court's statement in Harris that "the federal courts have no probate jurisdiction and

have sedulously refrained, even in diversity cases, from interfering with the operations of state tribunals invested with that jurisdiction" suggest that the probate exception also encompasses federal question cases. 317 U.S. at 447, 450 (emphasis added.). Quoting **In re Marshall**, 392 F.3d 1118, C.A.9 (Cal.), 2004, Sec. V, ¶ 2.

Consistent with Harris, the court has said that, in applying the probate exception, "[t]he evil to be avoided is federal interference with state probate proceedings." Hilton v. Mumaw, 522 F.2d 588. 593 (9th Cir. 1975).. This rationale is as relevant to federal question cases as it is to diversity ones. Quoting **In re Marshall**, 392 F.3d 1118, C.A.9 (Cal.), 2004, Sec. V, ¶ 3.

Again, the respondent never appealed the decision of the Georgia Department of Labor to any Georgia State Court. When the district court entered a judgment in favor of the Respondent and the Eleventh Circuit Affirmed the same, the power of the Georgia Department of Labor tribunal was negated.

The United States Court of Appeals for the Ninth Circuit has said in the case of **In re Marshall**:

"Where a state has regulated jurisdiction over probate matters to a special court and if that state's trial courts of general jurisdiction do not have jurisdiction to hear probate matters, then the federal courts also lacks jurisdiction over matters. McCan v. First Nat'l Bank of Portland, 139 F. Supp. 224, 227 (D.Or. 1954), aff'd, 229 F.2d 859 (9th Cir. 1956). A state court's holding regarding its jurisdiction over probate matters is binding on federal courts and is immune from collateral attack under the doctrine of res judicata. Underwriters Nat'l Assurance Co. V. N.C. Life & Accident & Health Ins. Guar. Ass'n, 455 U.S. 691, 706-07 (1982); Dufree v. Duke, 375 U.S. 106, 111, 115-16 (1963). Quoting **In re Marshall**, 392 F.3d 1118, C.A.9 (Cal.), 2004, Sec. V, ¶ 10.

In **Utah**, "the Court declared that res judicata might apply to administrative agency decisions '[w]hen [the] administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate.'" Citing **Gjellum v. City of Birmingham,**

Ala., 829 F.2d 1056 (11th Cir. 1987).

This Court has said in the case of **United States v. Utah Construction Company**:

"When an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply **res judicata** to enforce repose. **Sunshine Coal Co. v. Adkins**, 310 U.S. 381; **Hanover Bank v. United States**, 152 Ct. Cl. 391, 285 F.2d 455; Fairmont **Aluminum Co. v. Commissioner**, 222 F.2d 622; **Seatrain Lines, Inc. v. Pennsylvania R.Co.**, 207 F.2d 255.[fn 21] See also **Goldstein v. Doft**, 236 F.Supp. 730, aff'd 353 F.2d 484, cert. denied, 383 U.S. 960, where collateral estoppel was applied to prevent re-litigation of factual disputes resolved by an arbitrator."[3]

This Court has said in the case of **University of Tennessee v. Elliot**:

Held: 1. Title 28 U.S.C. § 1738 is not applicable to the unreviewed state administrative factfinding at issue here. However, federal common-law rules of preclusion have been frequently fashioned in the absence of a governing statute. Because § 1738 antedates the development of administrative agencies it does not represent a congressional determination that state administrative agency decisions should not be given preclusive effect. Pp. 794-795...

3. However, when a state agency acting in a judicial capacity resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, federal courts in actions under the Reconstruction civil rights statutes must give the agency's factfinding the same preclusive effect to which it would be entitled in the State's courts (a matter for resolution on remand here). In enacting those statutes, Congress

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3. Citing **United States v. Utah Construction Company**, 384 U.S. 394, 422 (86 S.Ct. 1545,1560) 16 L.Ed.2d 642) (1966). Quoting **Sunshine Coal Co.v Adkins**, 310 U.S. 381 (60 S.Ct. 907, 909)(1940).

did not intend to create an exception to general rules of preclusion, or to foreclose the adaptation of those rules to such subsequent developments as the use of administrative adjudication. Giving preclusive effect in federal courts to the factfindings of state administrative bodies acting in a judicial capacity serves both the value of enforcing repose, which underlies general principles of collateral estoppel, and the value of federalism. Quoting **University of Tennessee v. Elliot**, 478 U.S. 788, 789 (1986)

This Court has said in the case of **Marrese v. American Academy of Ortho. Surgeons**:

"The issue whether there is an exception to § 1738 arises only if state law indicated that litigation of a particular claim or issue should be barred in the subsequent federal proceeding."[4]

This Court has said in the case of **Johnson v. Drew**:

"It has undoubtedly been affirmed over and over again that in the administration of the public land system of the United States questions of fact are for the consideration and judgment of the land department, and that its judgment thereon is final. Whether, for instance, a certain tract is swamp land or not, saline land or not, mineral land or not, presents a question of fact not resting on record, dependent on oral testimony; and it cannot be doubted that the decision of the land department, one way or the other, in reference to these questions is conclusive and not open to relitigation in the courts, except in those cases of fraud, etc., which permit any determination to be reexamined. **Johnson v. Towsley**, 13 Wall. 72; **Smelting Company v. Kemp**, 104 U.S. 636; **Steel v. Smelting Company**, 106 U.S. 447; **Wright v. Roseberry**, 121 U.S. 488; **Heath v. Wallace**, 138 U.S. 573; **McCormick v. Hayes**, 159 U.S. 332."[5]

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4. Citing **Marrese v. American Academy of Ortho. Surgeons**, 470 U.S. 373, 383 (105 S.Ct. 1327, 1333) (1985).

5. Citing **Johnson v. Drew**, 171 U.S. 93, 99-100 (18 S.Ct. 800, 802) (1898). Quoting **Steel v. Smelting Company**, 106 U.S. 447 (1 S.Ct. 389, 396) (1882), **Wright v. Roseberry**, 121 U.S. 488, 509 (7 S.Ct. 985, 999)(1887),

In Georgia for example, "In any judicial proceeding under this Code section, the findings of the board of review as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the court shall be confined to questions of law." O.C.G.A.§ 34-8-223(b)." Citing **McGahee v. Yamaha Motor Mfg. Corp.**, 214 Ga. App. 473, 338 S.E.2d 249 (1994) and Georgia Employment Security Law, Georgia Department of Labor, Michael L. Thurmond, Commissioner, 1999 Ed., p. 148.

Statue; O.C.G.A. § 34-8-223 states:

> " (a) Any decision of the board of review, in the absence of a reconsideration as provided in subsection (d) of Code Section 34-8-192, shall become final 15 days after the date of notification or mailing. Judicial review shall be permitted only after any party claiming to be aggrieved thereby has exhausted his or her administrative remedies as provided by this chapter. The Commissioner shall be deemed to be a party to any judicial action involving any such decision and shall be represented in any such judicial action by the Attorney General.
>
> (b) Within 15 days after the decision of the board of review has become final, any party aggrieved thereby may secure judicial review by filing a petition against the Commissioner in the superior court of the county where the employee was last employed. In the event the individual was last employed in another state, such appeal shall be filed in Fulton County, Georgia. Any other party to

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Heath v. Wallace, 138 U.S. 573 (11 S.Ct. 380, 384)(1891), **McCormick v. Hayes**, 159 U.S. 332 (16 S.Ct. 37, 43)(1895).

the proceeding before the board of review shall be made a respondent. The petition, which need not be verified but which shall state specifically the grounds upon which a review is sought, shall be served upon the Commissioner or upon such person as the Commissioner may designate, and such service shall be deemed completed service on all parties, but there shall be left with the party so served as many copies of the petition as there are respondents. The Commissioner shall mail one such copy to each such respondent.

Within 30 days after the service of the petition, the Commissioner shall certify and file with the superior court all documents and papers and a transcript of all testimony taken in the matter, together with the board of review's findings of fact and decision therein. The Commissioner shall not be required to furnish any person with a copy of the aforementioned documents, papers, or transcripts or the original of these items prior to the Commissioner's filing these items with the court. The Commissioner may also, in his or her discretion, certify to such court questions of law involved in any decision. As a guide for future interpretation of the law, when the Commissioner is aggrieved by any decision of the board of review or deems such decision contrary to the law and no other party enters an appeal therefrom, the Commissioner may, within 20 days after such decision has become final, appeal and certify to the superior court questions of law therein involved. The court shall consider and determine the same and enter a decree accordingly, which shall be subject to further appeal by the Commissioner. In any judicial proceeding under this Code section, the

findings of the board of review as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the court shall be confined to questions of law. Such actions and the questions so certified shall be heard in a summary manner and shall be given precedence over all other civil cases except cases to which the state is a material party and cases arising under Chapter 9 of this title.

An appeal may be taken from the decision of the superior court to the Court of Appeals in the same manner as is provided in civil cases but not inconsistent with this chapter. No bond shall be required for entering an appeal."

The Georgia Department of Labor is bound by its own judicial decisions, conduct and legal positions that are and have been rendered by Georgia court's in the cases of:

"If there is any evidence to support a finding of the Board of Review, it will be approved. **Caldwell v. Charlton County Bd. Of Educ.**, 157 Ga. App. 395, 277 S.E.2d 764 (1981); **Brown v. Caldwell**, 165 Ga. App. 743, 302 S.E.2d 359 (1983); **Green v. Tanner**, 186, Ga. App. 715, 368 S.E.2d 162 (1988)(decided under Ga.L.1937, p.806 and former § 34-8-176). The Superior Court is not authorized to weigh the evidence and substitute its fact findings for those of the administrative tier of fact. **McGahee v. Yamaha Motor Mfg. Corp.**, 214 Ga. App. 473, 338 S.E.2d 249 (1994)."[6]

It is Petitioners position her unemployment insurance case was decided under the any evidence standard since the judicial decision rendered in the same did not mention any

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6. Citing Georgia Employment Security Law, Georgia Department of Labor, Michael L. Thurmond, Commissioner, 1999 Ed., p. 149

section of O.C.G.A. § 24-1-1(1) to (7). Likewise, the "any evidence" standard as stated in **Gorin v. Osborne**, 756 F.2d 834 (11th Cir. 1985) applies to the instant case.

The Supreme Court of Georgia has said in the case of **McNeal v. Paine, Webber, Jackson & Curtis, Inc.**:

"This Court has held in **Pope v. City of Atlanta**, 240 Ga. 177 (240 S.E. 2d 241)(1977), and, more recently, in **Hill v. Wooten**, 247 Ga. 737 (279 S.E. 2d 227)(1981), that " . . . where a party fails to present a state law claim in federal court, a later suit will be barred if the state claim could have been litigated in the federal court under its pendent jurisdiction." **Hill v. Wooten**, supra. at 73"[7]

The Georgia Court of Appeals has said in the case of **Dickerson v. Dickerson:**

"'[C]ollateral estoppel applies where an issue of fact or law is actually litigated and determined by a valid judgment, and the determination is essential to the judgment. That determination in then conclusive in a subsequent action between the same parties.' See **Kent v. Kent**, 265 Ga. 211 (1)(452 S.E.2d 764)(1995). This concept, sometimes known as estoppel by judgment or issue preclusion, precludes the re-adjudication of issues already litigated to a conclusion in a previous action between the parties. See **Allen v. King Plow Co.**, 227 Ga. App. 795, 798 (1) (490 S.E.2d 457) (1997) (whole court); **Sorrells Constr. Co. v. Chandler Armentrout & Roebuck, P. C.**, 214 Ga. App. 193, 193-194 (447 S.E.2d 101) (1994)."[8]

Additionally, the Georgia Appeals Court has said in the case of **Smith v. Maytag Corp.** :

"[U]nder the doctrine of collateral estoppel, on the other hand, the second action is upon a different cause of action and the

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7. Citing **McNeal v. Paine, Webber, Jackson & Curtis, Inc.**, 249 Ga. 662, 663 (1982).

8. Citing **Dickerson v. Dickerson**, 247 Ga. App. 812, 813-815 (2001) 545 S.E.2d 378.

judgment in the prior suit precludes re-litigation of issues actually litigated and necessary to the outcome of the first action. (Cits.)' **Parklane Hosiery Co. v. Shore**,[9] 439 U.S. 322, 326, n. 5 (99 S.Ct. 645, 58 L.Ed.2d 552) (1979); see also **Block v. Woodbury**, 211 Ga. App. 184 (1) (438 S.E.2d 413) (1993)." **Sorrells Constr. Co. v. Chandler Armentrout** &c., 214 Ga. App. 193, 194 (447 S.E.2d 101) (1994)."[10]

"**McNeal v. Paine, Webber &c.**, 249 Ga. 662(2) (293 S.E. 2d 331)(1982), distinguished ***Gilmer***, supra , holding that an employee was in privity with his employer for purposes of determining whether issue preclusion was applicable. ***Sorrells Constr. Co.***, supra."[11]

The Georgia Court of Appeals has said in the case of **Clark v. State**:

"The Supreme Court held in **Ashe** that the Fifth Amendment guarantee against double jeopardy embodies collateral estoppel as a constitutional requirement. And the protections afforded by the double jeopardy clause are binding upon the states through the Fourteenth Amendment. **Benton v. Maryland**, 395 U.S. 784 (89 SC 2056, 23 L.Ed.2d 707)." [12]

It is Petitioners contention district court erred when it conducted a de novo inquiry into Petitioners **not for good cause employment dismissal** after Judge Smith's finding that

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9. **Parklane Hosiery Co. v. Shore**, 439 U.S. 322, 326 (99 S.Ct. 645, 645-646, 58 L.Ed.2d 552)(1979)

10. Citing **Smith v. Maytag Corp.**, 216 Ga. App. 676, 679 (1995) 455 S.E.2d 379.

11. Citing **Smith v. Maytag Corp.**, 216 Ga. App. 676, 680 (1995) 455 S.E.2d 379.

12. Citing **Clark v. State**, 194 Ga. App. 280, 281 (1990) 390 S.E.2d 425. Quoting **Ashe v. Swenson**, 397 U.S. 436 (90 S.Ct. 1189, 1190, 25 L.Ed.2d 469 (1970) and **Benton v. Maryland**, 395 U.S. 784 (89 S.Ct. 2056, 2057, 23 L.Ed.2d 707).

Petitioners did not intentionally fail to obey orders, rules, or instructions, or intentionally fail to discharge the duties for which employed and ruling otherwise.

This Court has described the consequences of the procedural posture the Respondent has taken involving prior proceedings and the proceedings of this case in **Smelting Co. v. Kemp**:

"In the course of their duty the officers of that department are constantly called upon to hear testimony as to matters presented for their consideration, and to pass upon competency, credibility, and weight. In that respect they exercise a judicial function, and, therefore, it has been held in various instances by this court that their judgment as to matters of fact, properly determinable by them, is conclusive when brought to notice in a collateral proceeding. Their judgment is such cases is, like that of other special tribunals upon matters within their exclusive jurisdiction, unassailable except by a direct proceeding for its correction or annulment."[13]

"The presumptions thus attending it are not open to rebuttal in an action at law."[14]

"[T]he statute then proceeds to declare that if an adverse claim is filed during the period of publication, it must be upon oath of the party making it, and must show the nature, boundaries, and extent of such adverse claim; and all proceedings, except the publication of the notice and the making and filing of the affidavit, shall be thereupon stayed until the controversy shall have been settled by a decision of a court of competent jurisdiction, or the adverse claim waived."[15]

Since, the Respondent did not file a direct appeal of the decision of the Administrative Law Judge as rendered, the

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13. Citing **Smelting Co. v. Kemp**, 104 U.S. 636, 640 (1881)

14. Citing **Smelting Co. v. Kemp**, 104 U.S. 636, 641 (1881)

15. Citing **Smelting Co. v. Kemp**, 104 U.S. 636, 656 (1881)

Respondent has conceded the fact findings of the Administrative Law Judge in Petitioners employment appeal case.

This Court has said in the case of in **Johnson v. Towsley**:

"The general proposition is recognized that when a special tribunal is authorized to hear and determine certain matters arising in the course of its duties, its decisions within the scope of its authority are conclusive."[16]

This Court has said in the case of **United States v. California &c. Land Co.** :

"Now, it is familiar law that when jurisdiction is delegated to any officer or tribunal, his or its determination is conclusive. Thus in the case of **United States v. Arredondo**, 6 Pet. 691, 729, this court said: "It is a universal principle, that, where power or jurisdiction is delegated to any public officer or tribunal over a subject-matter, and its exercise is confided to his or their discretion, the acts so done are binding and valid as to the subject-matter; and individual rights will not be disturbed collaterally for anything done in the exercise of that discretion within the authority and power conferred. The only questions which can arise between an individual claiming a right under the acts done, and the public, or any person denying its validity, are, power in the officer, and fraud in the party. All other questions are settled by the decision made or the act done by the tribunal or officer; whether executive, (1 Cranch, 170, 171,) legislative, (4 Wheat. 423; 2 Pet. 412; 4 Pet. 563,) judicial, (11 Mass. 227; 11 S. & R. 429; adopted in 2 Pet. 167, 168,) or special, (20 Johns. 739, 740; 2 Dow P.C. 321, etc.,) unless an appeal is provided for, or other revision, by some appellate or supervisory tribunal, is prescribed by law." See also the following cases: **Foley v. Harrison**, 15 How. 433, 448; **Johnson v. Towsley**, 13 Wall. 72, 83; **Smelting Company v. Kemp**, 104 U.S. 636, 640; **Shepley v. Cowan**, 91 U.S. 330, 340; **Moore v. Robbins**, 96 U.S. 530, 535; **Quinby v. Conlan**, 104 U.S. 420, 426; **Steel v. Smelting Co.**, 106 U.S. 447, 450; **Lee v. Johnson**, 116 U.S. 48, 51; **Wright v.**

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16. Citing **Johnson v. Towsley**, 80 U.S. 72, 72 (1871)

Roseberry, 121 U.S. 488, 509."[17]

This Court has said in the case of Steel v. Smelting Co.:

"'It is this unassailable character [of the patent] which gives to it its chief, indeed its only, value, as a means of quieting its possessor in the enjoyment of the lands it embraces. If intruders upon them could compel him, in every suit for possession, to establish the validity of the action of the Land Department and the correctness of its ruling upon matters submitted to it, the patent, instead of being a means of peace and security, would subject his rights to constant and ruinous litigation. He would recover one portion of his land if the jury were satisfied that the evidence produced justified the action of that department, and lose another portion, the title whereto rests upon the same facts, because another jury came to a different conclusion. So his rights in different suits upon the same patent would be determined, not by its efficacy as a conveyance of the government, but according to the fluctuating prejudices of different jurymen, or their varying capacities to weigh evidence.' 104 U.S. 636, 641."[18]

In the Eleventh Circuit there is controlling case law and this Circuit has said in the case of **Holley v. Seminole County School District**:

"We reiterate that whether there was "good cause" not to renew Holley's contract ***is not a de novo inquiry***. However, such an inquiry is fundamentally different from the one which is designed to protect First Amendment freedoms, primarily because the former is a question of state law. See Ga. Code Ann. § 20-2-940(a)(1)-(8)(enumerating 'good cause' criteria). The property interest that Holley has in his employment exists by virtue of the state requiring 'good cause' not to renew his contract, see Part II,

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17. Citing United States v. California &c. Land Co., 148 U.S. 31, 43-44 (13 S.Ct. 458, 463) (1893). Quoting Lee v. Johnson, 116 U.S. 48, 51 (6 S.Ct. 249, 250)(1885), Wright v. Roseberry, 121 U.S. 488, 509 (7 S.Ct. 985, 999)(1887).

18. Citing Steel v. Smelting Co., 106 U.S. 447, 454-455 (1 S.Ct. 389, 396)(1882).

supra; state-created procedures, if in keeping with due process, are generally adequate to safeguard such interests. Cf. **Parratt v. Taylor,**[19] 451 U.S. 527, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981)." (Emphasis added).[20]

In Georgia, as a general rule, "[w]hen an employment contract requires that termination be 'for cause' only, and the employer fires the employee without cause, a substantive breach occurs, and the employee would be entitled to seek full compensatory damages.." **Savannah College of Art & Design v. Nelph**, 256 Ga. 662-663(1) (460 S.E.2d 792) (1955). . . "such conduct discredit[ing] Employer or [was] detrimental to the reputation, character and standing of Employer" are disputed questions of material fact and matters of credibility that a jury must resolve. See **Cherokee County Hops. Auth. v. Beaver**, 179 Ga. App. 200, 205(2) 345 S.E.2d 904 (1986)(summary judgment precluded where question of credibility arises as to material issue). Citing **Salhab v. Tift Heart Ctr., P.C.**, 260 Ga. App. 799, 581 S.E.2d 363 (2003).

REASONS FOR GRANTING THE WRIT AND CONCLUSION

To determine Whether when a State of Georgia agency acting in a judicial capacity resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, will Georgia federal courts in actions under the Reconstruction civil rights statutes must give the agency's factfinding the same preclusive effect to which it would be entitled

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19. **Parratt v. Taylor,** 451 U.S. 527 (101 S.Ct. 1908, 1914-1915, 68 L.Ed.2d 420 (1981).

20. Citing **Holley v. Seminole County School District**., 755 F.2d 1492 (11th Cir. 1985).

in the State's courts as in the United States Court of Appeals for the Sixth Circuit.

Petitioner's respectfully request the Honorable Court to grant the Petitioners for Writ of Certiorari in order to prevent a collisions of authority across this country. And reverse and remand the Judgments of the federal courts in Georgia in favor of the Respondent and Against the Petitioner with respect to Petitioners reconstruction civil rights claim

Respectfully submitted,

Irene L. Stephens

Irene L. Stephens
Petitioner, In Propria Persona
1409 Back Cove Road
Virginia Beach, VA 23454

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Supreme Court, U.S.
FILED
NOV 14 2005
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No. 05-637

In The

Supreme Court of the United States

IRENE L. STEPHENS,

Petitioner,

vs.

GEORGIA DEPARTMENT OF TRANSPORTATION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE ELEVENTH CIRCUIT COURT OF APPEALS

APPENDIX
VOLUME I

Irene L. Stephens
Petitioner, In Propria Persona
1409 Back Cove Road
Virginia Beach, VA 23454
(757) 332-0636

APPENDIX Vol. I, App. I- OPINION OF THE ELEVENTH CIRCUIT COURT OF APPEALS DATED AUGUST 17, 2005

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 04-14222
Non-Argument Calendar

IRENE L. STEPHENS,

Plaintiff-Appellant,

versus

GEORGIA DEPARTMENT OF TRANSPORTATION,

Defendants-Appellees.

On Appeal from the United States District Court for the Northern District of Georgia

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ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

Before TJOFLAT, ANDERSON and DUBINA, Circuit Judges.

PER CURIAM:

the Petition(s) for Rehearing are DENIED and no member of

this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; eleventh Circuit Rule 35-5), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

Signed [unknown signature]
UNITED STATES CIRCUIT JUDGE

APPENDIX Vol. I, App.II - OPINION OF THE ELEVENTH CIRCUIT COURT OF APPEALS DATED MAY 31, 2005

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 04-14222
Non-Argument Calendar

IRENE L. STEPHENS,

Plaintiff-Appellant,

versus

GEORGIA DEPARTMENT OF TRANSPORTATION,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Georgia

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Before TJOFLAT, ANDERSON and DUBINA, Circuit Judges.

APPENDIX Vol. I, App.II

PER CURIAM:

Irene L. Stephens, proceeding pro se, appeals several decisions by the district court in her civil action filed against the Georgia Department of Transportation ("DOT"). She claimed, inter alia, the the DOT denied her a transfer and terminated her based on illegal, discriminatory motives. Stephens appeals the following procedural decisions: (1) the denial of her motion for sanctions; (2) the denial of her motion to amend her complaint; (3) the grant of the DOT's motion to strike portions of the record; and (4) the denial of her motion to dismiss her complaint without prejudice. Stephens also appeals the district court's grant of summary judgment in favor of the DOT. We affirm the district court in all respects. Stephens' arguments are addressed in turn.

I. STEPHENS' PROCEDURAL ARGUMENTS

A. Denial of Stephens' Motion for Sanctions

Stephens argues thath her due process rights were violated by virtue of the DOT's alleged destruction of a 1994 employee handbook and its alleged obstruction of justice. Applying a liberal reading of Stephen's appellate bried, it appears that she is asserting that the district court erred by denying her motion for sanctions under Fed.R.Civ.P.11 because the DOT was acting in bad faith throughout the litigation. See Haines v. Kerner, 404 U.S. 519, 520, 92 S.Ct. 594, 596 (1972)(holding that pro se pleadings are held to less stringent standards than counseled pleadings).

We review the district court's determinations regarding sanctions for abuse of discretion. Souran v. Travelers Ins. Co., 982 F.2d 1497, 1506 (11th Cir 1993). Federal Rule of Criminal Procedure 11(c) provides for sanctions when parties make certain representation to the court. District courts may impose

sanctions pursuant to Fed.R.Civ.P. 11(c) "(1) when a party files a pleading that has no reasonable factual basis; (2) when the party files a pleading that is based on a legal theory that has no reasonable chance of success and that cannot be advanced as a reasonable argument to change existing law; and (3) when the party files a pleading in bad faith for and improper purpose." Souran, 982 F.2d at 1506 (internal quotations omitted). Stephens' claim that the DOT acted in bad faith by concealing the 1994 employee handbook is without merit. Stephens admittedly possessed a copy of the handbook. Stephens did not produce any evidence of bad faith on the part of the DOT. Accordingly, the district court did not abuse its discretion by denying Stephens's motion for sanctions.

(B) Denial of Stephens's Motion to Amend her Complaint

Stephens argues that the district court "erred and/or abused [its] discretion by denying her motion for leave to amend her already amended complaint. Although leave to amend should be liberally granted when necessary in the interest of justice, the decision is committed to the district court's discretion and grant or denial of leave to amend is reviewed for abuse of discretion. Jennings v. BIC CORP., 181 F.3d 1250, 1258 (11th Cir. 1999); Fed R. Civ.P.15(a).

Stephens filed the motion to amend over six months after the deadline set by the Scheduling Order. Stephens' motion was thus untimely, and Federal Rule of Civil Procedure 16(b) requires her to show good cause in order for the court to grant her motion. Fed.R.Civ.Pro. 16(b). The only reason Stephen offered for the delay is that she discovered a new legal theory through additional research. We do not find that the district court abused its discretion in holding that this proffered

reason was insufficient to show good cause. See Jennings. 181 F.3d at 1268 (11th Cir. 1999)(stating that undue delay is an adequate basis for denying leave to amend).[1]

(C) Grant of the DOT's Motion to Strike

We review the district court's evidentiary rulings for an abuse of discretion, reversing only when there is substantial prejudice. Brochu v. City of Riviera Beach. 304 F.3d 1144, 1155 (1th Cir. 2002). The Federal Rules of Civil procedure provide that "the court may order stricken from any pleading any insufficient defense or and redundant, immaterial, impertinent, or scandalous matter." Fed.R.Civ.P. 12(f). We conclude that the district court did not abuse its discretion in striking portions of Stephens's motion for summary judgment because it contained "immaterial,impertinent, or scandalous matter." See Fed. R.Civ.P. 12(f).

(D) Denial of Stephens's Voluntary dismissal of her Complaint Without Prejudice

Stephens argues that the district court erred by denying her motion to dismiss her complaint voluntarily without prejudice, asserting that the DOT would not lose any substantial rights as a result of the dismissal.

We review for abuse of discretion the district court's decisions regarding the dismissal of a complaint without prejudice. Pontenberg v. Boston Scientific Corp., 252 F.3d

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1. Having found that the district court did not abuse its discretion in denying Stephens' motion to amend, we do not reach the question of whether the employee handbook constituted a unilateral contract because that issue was only raised in the motion to amend.

1253, 1256 (11th Cir. 2001). The Federal Rules of Civil Procedure permit a plaintiff to dismiss an action voluntarily only "upon order of the court and upon such terms and conditions as the court deems proper" after the defendant has filed an answer to the complaint, unless there is a stipulation signed by all parties to the action. Fed.R.Civ.P.41(a). We have held that "[a] voluntary dismissal without prejudice is not a matter of right." Fisher v. P.R. Marine Mgmt., Inc., 940 F.2d 1502 (11th Cir. 1991).

> [I]n most cases, a voluntary dismissal should be granted unless the defendant will suffer clear legal prejudice, other than the mere prospect of a subsequent lawsuit, as a result. The crucial question to be determined is, Would the defendant lose any substantial right by the dismissal. In exercising its broad equitable discretion under Rule 41(a)(2), the district court must weigh the relevant equities and fo justice between the parties in each case, imposing such costs and attaching such conditions to the dismissal as are deemed appropriate.

Pontenberg, 252 F.3d at 1255-56 (citations, quotations, and emphasis omitted).

In Stephens's case, the DOT objected to a dismissal without prejudice, arguing that such a dismissal would be prejudicial due to its pending motion for summary judgment. Stephens filed her complaint in June 2002. She filed her motion to voluntarily dismiss without prejudice in May 2004. During that two year period, numerous motions had been filed, extensive discovery had been produced, and motions for summary judgment were pending. The district court agreed with the DOT's assertion that only a dismissal with prejudice would be appropriate. Stephens was not entitled to a voluntary dismissal without prejudice as a matter of right, and the DOT

demonstrated that it would be prejudiced by such a dismissal. Accordingly, the district cour did not abuse its discretion by denying Stephens's motion to dismiss her complaint voluntarily without prejudice.

II. STEPHENS' SUBSTANTIVE ARGUMENTS

In her complaint, Stephens alleged: (1) violations of her due process and equal protection right; (2) employment discrimination; and (3) retaliation for exercising a legal right. The district court read the complaint broadly in deference to Stephens' pro se status, and considered her to have alleged:(1) a violation of due process and equal protection rights pursuant to 42 U.S.C. § 1983; (2) a violation of Title VII of the Civil Rights Act; (3) a violation of the Americans with Disabilities Act ("ADA"); and (4) a violation of the Age Discrimination Employment Act ("ADEA"). The district court granted summary judgment to the DOT on all claims.[2]

We review the district court's grant of a motion for summary judgment de novo, " applying the same legal standards that bound the district court." Jackson v. BellSouth Telecomm., 372 F.3d 1250, 1279 (11th Cir. 2004). Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with

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2. On appeal, Stephens also argues that a psychologist who was supposed to examine her on December 8, 2000, improperly released her medical records to the DOT. Stephens did not raise this issue in the district. We generally will not consider issues raised for the first time on appeal, with several exceptions, including the issue "involved a pure question of law. and if refusal to consider it would result in a miscarriage of justice." Narey v. Dean, 32 F. 3d 1521, 1526-27 (11th Cir. 1994). Since Stephens raised her claim regarding "patient/client confidentiality" for the first time on appeal, and our refusal to consider it will not result in a miscarriage of justice, we conclude that Stephens waived this claim.

the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P.56(c). A material fact is genuine only "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson, 477 U.S. at 258, 106 S.Ct. At 2510.

A. Sovereign Immunity

The district court granted summary judgment to the DOT on Stephens' § 1983, ADA, and ADEA claims after finding that the DOT had immunity pursuant to the Eleventh Amendment. Stephens brought her claim solely against the Georgia department of transportation. As an arm of the state, the DOT is entitled to the same sovereign immunity of the state itself. Robinson v. Ga. Dep't of Transp., 966 F.2d 637, 640 (11th Cir. 1992). Congress has not abrogated immunity for claims brought pursuant to § 1983, the ADEA, or the ADA. See id. (holding that the Eleventh Amendment barred plaintiff's § 1983 against georgia DOT); Kimel v. Fla.Bd. of Regents, 528 U.S. 62, 120 S.Ct. 631 (2000)(holding that the ADEA did not validly abrogate eleventh Amendment immunity); Bd. Of Trs. of Ala. V. Garrett, 531 U.S. 356, 121 S.Ct. 955 (2001)(holding that state agencies were entitled to Eleventh Amendment immunity from employes' claims brought pursuant to the ADA). Therefore, the district court's grant of summary judgment on these claims was proper.

B. Title VII

The district court, reading Stephens' claim liberally, stated that she alleged several cognizable theories under a Title VII claim: (1) that Stephens was denied a transfer and ultimately terminated because of her sex; (2) that she was a victim of disparate treatment; and (3) that she was retaliated

against because of he sex. The district court found that Stephens failed to establish a prima facie case under Title VII and that even is she had established a prima facie case, the DOT came forward with a legitimate, non-discriminatory reason for terminating her that Stephens could not show was pretextual.[3]

A plaintiff may establish a prima facie case of discrimination by virtue of the denial of a job transfer or termination by showing that (1) she is a member of a protected class; (2) she is qualified for the position; (3) she was subjected to adverse employment action; and (4) she was replaced by a person outside the protected class. Kelliher v. Veneman, 313 F.3d 1270, 1275 911th Cir. 2002). The plaintiff generally has the burden of establishing a prima facie case of discrimination. McDonnell Douglas Corp. V. Green, 411 U.S. 792, 802, 93 S.Ct. 1817, 1824, 36 L.Ed.2d 668 (1973) Establishing a prima facie case of discrimination creates a presumption of unlawful discrimination, and the employer must come forward with evidence of a legitimate non-discriminatory reason for its decision. Id. At 802, 93 S.Ct. At 1824. This burden is "exceedingly light," and the employer must merely proffer non-discriminatory reasons, not prove them. Perryman v. Johnson

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3. Stephens argues that the district court erred by conducting a de novo inquiry of her claims because, during her action to obtain state unemployment benefits, a state administrative hearing officer allegedly had already ruled on the merits of her claims by determining that the DOT had failed to meet its burden of proof to establish Stephens's ineligibility ofr benefits. By finding that the DOT had failed to meet its burden of proof to establish Stephens's disqualification unemployment benefits, the state administrative hearing officer did not address the merits of any potential ADEA, ADA, or Title VII claims. Furthermore, the state administrative ruling does not have a preclusive effect over Stephens's Title VII claims. See Bishop, 361 F.3d 607, 610 (11th Cir. 2004). Accordingly, the district court did not err by conducting a de novo review of the case before granting summary judgment in favor of the DOT.

Prods. Co., 698 F.2d 1138, 1142 (11th Cir. 1983). When the employer expresses one or more legitimate reasons for its actions, the preseumption of discrimination evaporate, and the plaintiff must raise a genuine issue of material fact as to whether the reasons offered by the defendant are pretextual. McDonnell Douglas, 411 U.S. at 804, 93 S.Ct. at 1825.

Assuming arguendo that Stephens established a prima facie case with respect to one or more of her claims, summary judgment for the DOT was nevertheless appropriate because it offered legitimate, non-discriminatory reasons for her termination, and Stephens did not produce evidence creating a genuine issue of material fact that the proffered reasons were pretextual. Stephens refused to follow her supervisors' direction on several occasions, took frequent sick leave, and took a state vehicle and drove dangerously on public roads. Even after this, this DOT attempted to meet with her and work with her, but she refused to cooperate. Any of these reasons are sufficient legitimate reasons for termination, and nothing in the record indicated they are pretextual.

III. Conclusion

Upon careful review of the record and the parties' briefs, we find no reversible error.[4]

AFFIRMED.

ENTERED FOR THE COURT:

Signed [unknown signature]
UNITED STATES CIRCUIT JUDGE

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4. Other arguments asserted on appeal are rejected without need for further discussion.

APPENDIX Vol.I. App. III - OPINION OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA DATED JULY 20, 2004

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IRENE L. STEPHENS	:	
	:	
Plaintiff(s),	:	
	:	CIVIL ACTION NO.
v.	:	
	:	1:02-CV-1608-RWS
GEORGIA DEPARTMENT OF TRANSPORTATION	:	:
	:	
Defendant(s)	:	

ORDER

Plaintiff Irene L. Stephens filed this employment discrimination suit against her former employer, Defendant Georgia Department of Transportation "Defendant" or "GDOT"). Now before the Court for consideration are Defendant's Motion for Summary Judgment [62-1] as to Plaintiff's Title VII claims; Plaintiff's Motion for Summary Judgment [97-1]; Defendant's Motion to Strike Plaintiff's Response and Opposition to Defendant's Motion for Summary Judgment [98-1], or in the alternative, Strike from the Record certain portions of Plaintiff's Response [98-2]; and Plaintiff's Dismissal of Complaint [107-1]. After considering the entire record, enters the following Order.

As an initial matter, Plaintiff has attempted to voluntarily

dismiss the Complaint; however, she has clarified that she wishes to do so without prejudice. For the reasons set forth in the Court's Order entered June 17, 2004, Plaintiff has not met the requirements for obtaining such a dismissal. Accordingly, her Dismissal of Complaint [107-1] which the Court construes as a motion to voluntarily dismiss without prejudice, is hereby **DENIED**.

The detailed procedural history of this case is set forth in the Court's Order entered April 23, 2004 (the "April 23 Order"), and the Court does not describe it again here. In the April 23 Order, the Court granted summary judgment to Defendant on all of Plaintiff's claims except for he Title VII claim..[1] Because of the unusual procedural posture at which certain summary judgment briefs had been filed, the Court allowed the parties to complete additional briefing on the Title VII issues only. The now-pending motions arise from that additional briefing.

I. Motions to Strike

Defendant's ask the Court to Strike Plaintiff's Response and Opposition to their Motion for Summary Judgment and Plaintiff's Cross-motion for Summary Judgment [97-1], or in the alternative, to strike certain portion of that document. Although the Court declines to strike the entire document, it finds that striking certain portions of it is warranted here.

1.In the April 23 Order, the Court stated that Defendant is entitled to Eleventh Amendment immunity from claims arising under Title II of the ADA. Since that time, the Supreme Court has held that Congress validly abrogated sovereign immunity with respect to such claims involving due process rights-in particular, the right of access to the courts. **Tennessee v. Lane**, - U.S.-, 124 S. Ct. 1978, -L.Ed. 2d (2004). Nevertheless, Title II is not applicable here because it deals with access to public services, programs, and activities, not employment like Title I. **Id**. at 1984.

APPENDIX Vol.I. App. III

Federal Rule of Civil procedure 12(f) provides that the "court may order stricken from any pleasing . . . any redundant, immaterial, impertinent, or scandalous matter." "Scandalous matter" may be that which reflects cruelly upon a party's moral character, uses repulsive language, or detracts from the dignity of th . court. Carone v. Whalen, 121 F.R.D. 231, 233 (M.D.Pa. 1988). Moreover, although a court must liberally construe pro se pleadings, a party's pro se status does not entitle her to file abusive documents. Theriault v. Silber, 579 F.2d 302, 303 (5th Cir. 1978).[2]

Defendants point to several portions of Plaintiff's Response which they contend are scandalous. First, Plaintiff makes reference to affiant Velvia Caldwell's bankruptcy filings and states that Ms. Caldwell "totally relished the opportunity to once again, lie, cheat and act dishonestly." (Pl.'s Resp. [.97-1] at 9.)Plaintiff refers to Ms. Caldwell as a "phoney witness " and is very derogatory of her character. The Court concludes that the entire section is vexatious and abusive. It adds nothing to the Court's consideration of summary judgment issues because (1) the Court cannot consider issues of credibility; and (2) even if portions of it might be allowable , it fails to provide evidence in support of the assertions. See generally Anderson v. Liberty Lobby, Inc., 477 U.S. 247, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986) (describing standards for considering motion for summary judgment).

Second, footnote 10 of Plaintiff's Response is an attack on Judge Martin, the judge to whom this case was originally

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2. The U.S. Court of Appeals for the Eleventh Circuit adopted as binding precedent the decisions of the U.S. Court of Appeals for the Fifth Circuit handed down prior to September 30, 1981. Bonner v. City of Prichard, 661 F.2d 1206, 1207 (11th Cir. 1981).

assigned. The footnote states that Judge Martin "intended to throw the case for the Defendant" and "libeled and slandered Plainitff." (Pl.'s Resp. [97-1] at 27 n.10.) This is not the first time Plaintiff has used the pleadings before the undersigned to make such caustic accusations against a member of this Court. The Court agrees with Defendants that this type of statement is the kind contemplated by Rule 12(f). See Theriault, 579 F.2d at 303 ("Our pro se practice is a shield against the technical requirements of a past age; it is not a sword with which to insult a trial judge.").

Finally, Plaintiff 's Respone repeatedly accuses Defense counsel of lying, knowingly submitting perjured affidavits, and committing fraud upon the Court, Plaintiff provides no basis for these serious allegations, which are vexatious, offensive , and only obscure the issues before the Court. See Carone, 121 F.R.D. at 233-34 (striking plaintiff's complaint which, among other things, included attacks on opposing attorney, contending he was a liar and accusing him or perjury).

Based on the foregoing, the Court concludes that Defendant's Motion is due to be granted as to the following portions of Plaintiff's Response:(1) all references and documents relating to bankruptcy filings of Velvia Caldwell; (2) the entire section entitled "the Perjured Affidavit of Velvia Caldwell,"(3) footnote 10; (4) every reference to a perjured affidavit; and (5) every reference to Defendant's counsel as being fraudulent. The Court cautions Plaintiff that it will consider striking such material sua sponte in the future

II. Motions for Summary Judgment

A. Plaintiff's Motion for Summary Judgment

In her Response and Opposition to Defendant's Motion

for Summary Judgment, Plaintiff herself moves for summary judgment. This motion is untimely because it was filed more than 20 days after the close of discovery. N.D.Ga.Local R. 56.1A. Accordingly, it is hereby **DENIED**.

B. Defendant's Motion for Summary Judgment on Title VII Claims

As noted above, the only remaining claims for consideration are Plaintiff's claims for race and gender discrimination under Title VII. The Court concludes that Defendant is entitled to summary judgment on these claims.

Factual Background

Beginning in April 1999, Plaintiff was employed by Defendant as a Transportation Engineer Associate.[3] From September 2000 until Plaintiff's termination, Plaintiff's direct supervisor was Darrel Williams, a Project Engineer at GDOT whom had been with the agency for twenty-six years. During Plaintiff's employment, Steve Henry was the District Engineer for the metro Atlanta region of GDOT. In November 2000, Mr. Henry was alerted that there were concerns about Plaintiff's performance and her behavior on the job. (Henry Aff.¶ 3.)

For Example, on November 7, 2000, Plaintiff was to

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3. The Court gleans the facts from Defendant's attachments to its Motion for Summary Judgment and Reply, Plaintiff's attachments to the Amended Complaint, and Plaintiff's other submissions. Although Plaintiff has submitted an affidavit, it contains self-serving ipse dixit and conclusions of law unsupported by other record evidence and is thus not sufficient to create genuine issues of material fact. See Bennett v. Town of Riverhead, 940 F.Supp. 481, 486 (E.D.N.Y. 1996) ("Conclusory, ipse dixit assertions will not defeat a summary judgment motion.").

complete a file folder for an upcoming project and did not complete this project as requested. (Williams Aff.Arr.A.) On November 8, 2000, Plaintiff left the project site and went to the General Office without Mr. Williams' permission. (Williams Aff. ¶ 6.) The following day, Mr. Williams met with Plaintiff to address these issues; after the meeting, Plaintiff stated that she was sick and had to go home. (Id. ¶ 7.) Plaintiff failed to show for work on November 10 and 11, 2000. (Id. ¶ 8.) Mr. Williams sent Plaintiff a letter of warning for failing to report to work as scheduled. (Id. Att. B.) According to Defendant, Plaintiff frequently used sick leave when she was scheduled for an undesirable temporary shift or assignment.[4]

On November 17, 2000, Plaintiff requested 32 hours of "emergency annual leave." (Am. Compl. ¶ 113; Williams Aff. Att.C.) Plaintiff met with Mr. Williams and two other GDOT employees, who told her that she had twenty-three hours of sick leave available but could supplement that time with nine hours of annual leave. (Id.) However, Plaintiff would need to provide a doctor's excuse according to GDOT's policies. (Id.) Plaintiff replies that she did not want to use sick leave because this was an emergency, and she requested clarification. (Id.) Mr. Williams took her to Mr. Henry; after he instructed her about the leave policy she stated that she needed to be taken to the emergency room. (Id.) Mr. Williams took her to the nearest emergency room. (Id.)

On December 1, 2000, Plaintiff drove her personal vehicle onto a project site, stating that lifting traffic cones out of he GDOT truck was giving her back problems. (Williams Aff. Att. D.) Mr. Williams told Plaintiff that she would need a doctor's excuse if she was unable to lift the cones, and he told her that she would need to pick up her state vehicle from the

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4. Plaintiff alleges that she sought an immediate transfer to the Office of Bridge design on November 13, 2000. (Am. Compl.¶ 102.)

Forest Park Lab because she could not conduct state inspections in her personal vehicle. (Id.) Plaintiff picked up her state vehicle and then radioed Mr. Williams to say that she would need to leave early for a doctor's appointment. (Id.) Mr. Williams conveyed a message to Plaintiff that she should ride back to Forest Park Lab with a co-worker, Cheryl Davis, so that another employee could use her state vehicle for the remainder of the day. (Id.) When Ms. Davis approached Plaintiff, Plaintiff refused to release the vehicle. (Id. Att.E.) In fact, Plaintiff skidded out of the project site and nearly hit Mr. Davis. (Id.) Mr. Williams instructed Ms. Davis to follow Plaintiff. (Id.) Plaintiff drove to Forest park lab; on the way, Ms. Davis observed Plaintiff driving erratically, at excessively slow and fast speeds. (Id.) When they reached Forest Park Lab, Plaintiff turned over the keys to the vehicle. (Id.)

The same day of this incident, Mr. Williams received a doctor's excuse from Plaintiff stating she would be out of work until December 6, 2000. (Williams Aff. Att. F.) No reason was provided. (Id.) As a result of this incident and Plaintiff's perceived misuse of leave, Rachel Brown, the Area Engineer at the time, recommended disciplinary action for Plaintiff. (Brown Aff. ¶ 5.) On December 7, 2000, Ms. Brown, Mr. Henry, and Donald LaFrenier, Administrative Officer of the district at the time, went to Plaintiff's project site to discuss the December 1 incident and attempt to understand Plaintiff's actions. (Brown Aff ¶ 6; Henry Aff ¶ 5; LaFrenier Aff. ¶ 3.) Plaintiff was uncooperative, adversarial, and non-responsive. (Brown Aff ¶ 6; Henry Aff. ¶ 6; LaFrenier Aff. ¶ 3.) As a result, Mr. Henry placed Plaintiff on administrative leave with pay and instructed her to attend a professional evaluation on December 8, 2000. (Henry Aff. ¶ 6.) Mr. Henry explained to Plaintiff that her continued employment was contingent on her attending the evaluation. (Id.) On December 8, 2000, however, Plaintiff refused to attend the evaluation; she faxed a letter to

Bill Dunn at GDOT so stating and requested a statement from Mr. Henry in writing. (Williams Aff. Att. I.) On that same day, Mr. Henry terminated Plaintiff for insubordination effective December 27, 2000. (Henry Aff. ¶ 8.)

Plaintiff filed two internal grievances while employed at GDOT that are of some relevance here. On December 4, 2000, she filed a grievance relating to an incident with Ms. Brown on November 30, 2000. (Am. Compl. Ex. 34.) In this grievance, Plaintiff stated that Ms. Brown maintained unsafe working conditions by, among other things failing to respond to gasoline odors in an office building. (Id.) Plaintiff filed a second internal grievance on December 11, 2000; although Plaintiff alleges that this grievance complained that Defendant had retaliated against her for requesting to be transferred to the Office of Bridge Design, (Am. Compl. ¶ 148), the grievance itself states that Defendant retaliated against her for filing her first grievance. (See Am. Compl. Ex. 39.)

Plaintiff filed a charge with the Equal Employment Opportunity Commission ("EEOC") and the Georgia Commission on Equal Opportunity on June 15, 2001.[5] (Am.

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5. It seems possible that some of Plaintiff's claims may time-barred because certain instances of discrimination occurred more than 180 days prior to her filing the charge with the EEOC. See 42 U.S.C. § 2000e-5. On the record before it, however, the Court is unable to determine whether Plaintiff's intake questionnaires, file earlier in 2001, met the requirements set forth in Title VII. See, eg. Shempert v. Harwick Chem. Corp., 151 F.3d 793. 796 (8th Cir. 1998)(intake form must be signed under oath or verified to satisfy statutory requirement for administrative

Compl. Exs. 43, 44.) Plaintiff apparently received a right-to-sue letter prior to filing this case.

Discussion

1. Summary Judgment Standards

Summary judgment is appropriate when the pleadings, depositions, and affidavits submitted by the parties show that no genuine issue of material fact exists and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The court should view the evidence and any inferences that may be drawn in the light most favorable to the non-movant. Addickes v. S.H. Kress & Co., 398 U.S. 144, 158-59, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970).The party seeking summary judgment must first identify grounds that show the absence of a genuine of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323-24, 106 S.Ct. 2548, 91 L.Ed. 2d 265 (1986). The burden then shifts to the non-movant, who must go beyond the pleadings and present affirmative evidence to show that a genuine issue of material fact does exist. Anderson v. Liberty Lobby, Inc., 477 U.S. at 257.

2. Title VII

Title VII makes it unlawful to discriminate against any individual with respect to her employment because of the individual's race, color, religion, sex, or national origin. 42

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charge); cf. Edelman v. Lynchburg College, 535 U.S. 106, 109, 122 S.Ct. 1145, 152 L.Ed. 2d 188 (2002)(technically flawed charge of discrimination can be addressed by later amendment).

U.S.C. § 2000e-(a). This Court outlined the requirements for proving employment discrimination using circumstantial evidence in McDonnell Douglas Corp. V. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed. 2d 668 (1973). Under the McDonnell Douglas analysis, a plaintiff must establish a prima facie case of discrimination. Id. At 802; Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 254, 101 S.Ct. 1089, 67 L.Ed. 207 (1981); see Benson v. Tocco, Inc. 113 F.3d 1203, 1207 (11th Cir. 1997)(plaintiff must produce sufficient evidence to support an inference that the employer based its decision on an illegal criterion to establish prima facie case). Establishing a prima facie case has the same effect as a presumption of unlawful discrimination; the employer cannot be silent but must come forward with evidence of a legitimate nondiscriminatory reason for its decision. 411 U.S. at 802; Chapman v. A.I. Transp., 229 F.3d 1012, 1024 (11th Cir. 2000); Young v. Gen.Foods Corp., 840 F.2d 825, 828 (11th Cir. 1998). This burden is "exceedingly light," as the employer "must merely proffer [non-discriminatory reasons], not prove them." Perryman v. Johnson Prod. Co., 698 F.2d 1138, 1142 (11th Cir. 1983). When a defendant expresses one or more legitimate reasons for the action, the presumption of discrimination evaporates, and a plaintiff must raise a genuine issue of material fact as to whether the reasons offered by the defendant are pretextural. McDonnell Douglas, 411 U.S.at 804; Chapman, 229 F.3d at 1024-25; Brown v. Amer. Honda Motor Co., 939 F.2d 946 (11th Cir. 1991)(requiring plaintiff to come forward with specific evidence demonstrating that the defendant's reasons are a pretext for discrimination after defendant offers sufficiently probative, credible, non-discriminatory reasons for its actions).

Reading the Amended Complaint liberally, it appears that Plaintiff alleges several theories cognizable under a Title VII claim: (1) that she was denied a transfer to the Office of Bridge Design and ultimately terminated because of her sex; (2)

that she was a victim of disparate treatment; and (3) that she was retaliated against because of her sex.[6] As discussed below, Defendant is entitled to summary judgment with respect to all of these theories.

Prior to turning to the merits of the Title VII claims, however, the Court notes that Plaintiff appears to argue that a state administrative law judge's ("ALJ") decision on her entitlement to state unemployment benefits should have a preclusive effect in this case. The ALJ did not consider any of the federal issues present in this case. Moreover, it is well established that unreviewed state administrative rulings do not have preclusive effect over Title VII claims. Bisgop v. City of Birmingham Police Dep't, 361F.3d 607, 610 (11th Cir. 2004); Crapp v. City of Miami Beach, 242 F.3d 1017, 1022 (11th Cir. 2001). The Court now turns to the merits of the Title VII Claims.

a. Denial of transfer and ultimate termination

Defendant contends that Plaintiff cannot establish a prima facie case as a matter of law. The Court agrees. To establish a prima facie case, a plaintiff must show: (1) she is a member of a protected class; (2) she is qualified for the position; (3) she was subjected to adverse employment action; and (4) she was replaced by a person outside the protected

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6. Although Plaintiff alludes to her race and religion as part of her Title VII claim, there are no allegations or evidence in the record to support claims based on Plaintiff's race or religious preferences. Moreover, the affirmative evidence presented by Defendant shows that neither Plaintiff's race nor religion was a casual factor in any of Defendant's conduct. (See, e.g., Brown ¶¶ 12,14 (Plaintiff was treated equally to similarly situated individuals of other races, and affiant was unaware of Plaintiff's religious preferences); Davis Aff. ¶¶ 8,10 (same); Henry Aff. ¶¶11,13 (same); LaFrenier Aff. ¶¶ 5,7 (same); Williams Aff. ¶¶ 20, 22 (same).)

class. Kelliher v. Veneman, 313F.3d 1270, 1275 (11th Cir. 2002); Hinson v. Clinch County Bd. of Educ., 231 F.3d 821, 828 (11th Cir. 2000); Smith v. Ala. Dep't of Corr., 145 F. Supp.2d 1291, 1297 (M.D. Ala. 2001). With the exception of Plaintiff's status as a female, Plaintiff has failed to even allege several of these elements.[7]

i. Denial of transfer

Plaintiff alleges that on November 13, 2000, she requested an immediate transfer to the Office of Bridge Design. (Am. Compl. ¶ 102.) She alleges that "Defendant continued to recruit engineers to work at the Office of Bridge Design . . . when those individuals hired had less experience and abilities than did the Plaintiff." (Id. ¶ 105.) Reading the Amended Complaint wery liberally, it appears that Plaintiff argues that Defendant refused to transfer her because of her sex. (See Am. Compl. Count Two G ("Defendant . . . committed such pertinent acts . . . so as to ensure that the Plaintiff, as a woman, would not be accorded the same status as being accorded to men.").)

This claim cannot succeed for several reasons. First, Plaintiff has not shown evidence that she was qualified for the position she sought on the Office of Bridge Design. She failed to describe that position at all. Second, Plaintiff has not shown evidence how the failure to transfer her amounted to an adverse decision. To meet this requirement, a plaintiff must show that denial of a transfer amounted to "a serious and material change in the terms, conditions, or privileges of employment." Smith, 145 F.Supp. At 1297. Plaintiff must further show that a

---

7. Although Plaintiff has provided no allegations or evidence with respect to whether the position was given to someone outside her protected class, Defendant's have provided evidence that the position was filled by a man after Plaintiff's termination. (Liles Aff.[101-1, Ex.A]¶8.)

reasonable person in her position would view the employment action as adverse. Hinson, 231 F.3d at 829; Doe v. DeKalbCounty Sch. Dist., 145 F.3d 1441, 1449 (11th Cir. 1998). Plaintiff has not even alleged facts supporting these elements, and there is not evidence before the Court to meet these standards.

Third, Defendants have presented evidence showing that Plaintiff never actually applied for a transfer to the Office of Bridge Design. (Liles Aff.¶ 6.) Plaintiff expressed interest in the position, but did not follow up with a formal request. (Id.) Plaintiff has shown no evidence creating issues of fact regarding this matter, which is insufficient at the summary judgment stage.

Based on the foregoing, Defendant is entitled to summary judgment on this claim.

ii. Termination

Likewise, Plaintiff cannot survive summary judgment on her termination claim, which entails the same elements as the transfer claim. She has failed to show that she was replaced by a minority or a male or that she was even replaced. She merely contends that at the time of her employment, all twelve GDOT board members wer men. She further states, without providing evidence, that Defendant generally failed to recruit or promote women at top-level management positions. Even if Plaintiff were able to establish a prima facie case of gender discrimination, however, Defendant has come forward with a legitimate, non-discriminatory reason for termination her. She refused to follow her supervisors' directions on several occasions, and took a state vehicle and drove dangerously on public roads, as evidenced by Defendant's affidavits and exhibits. Even after such behavior, Defendant attempted to meet with Plaintiff and attempt to work with her, but she failed

to cooperate. This legitimate, non-discriminatory reason for termination Plaintiff meets Defendant's summary judgment burden. See Kelliher, 313 F.3d at 1277 (evidence of plaintiff's "dereliction of duty and insubordination constituted an adequate non-discriminatory reason" to discharge); Williams v. Motorolla, Inc., 303 F.3d 1284, 1292 (11th Cir. 2002)(record "firmly reflect[ed]" that plaintiff was fired for insubordination and inability to get along with co-workers and superiors, such that judgment was properly entered for defendant employer). There is no evidence in the record that this reason was pretextual, and Defendant is accordingly entitled to summary judgment on this claim. b. Disparate treatment

Nor can Plaintiff survive summary judgment under a disparate treatment theory. To show disparate treatment, a plaintiff must show that she was similarly situated to others but was treated differently in spite of similar misconduct, the same workplace rules, and the dame decision-making supervisor. Knight v. Baptist Hosp., Inc., 330 F.3d 1313, 1315 (11th Cir. 2003); see Holifield v. Reno, 115 F.3d 1555, 1562 (11th Cir. 1992)(describing principles).

Plaintiff appears to argue that two individuals were treated differently than she. She alleges that Larry Seabrook, a State maintenance Engineer, was involved in an accident as a result of alcohol but was not required to undergo a fitness evaluation and was not terminated. (Am. Compl. ¶¶ 34-37.) She also alleges that her supervisor, Cheryl Davis, was absent from work for thirty days while she was in jail for drinking and driving and was never disciplined. (Am. Compl. ¶¶ 52-54.)

These allegations are insufficient because Plaintiff has not alleged facts or presented evidence showing that she was similarly situated with Mr. Seabrook or Ms. Davis. Moreover, Defendant has presented evidence showing that Mr. Seabrook was demoted as a result of conduct other than insubordination,

(Henry, Aff. ¶ 9), and Ms. Davis was visiting her ill father during her absence. (Williams Aff. ¶ 18.) These facts distinguish these individuals from plaintiff, and therefore, summary judgment is appropriate. Holifield, 115 F.3d at 1562.

c. Retaliation

Finally, Defendant is entitled to summary judgment with respect to Plaintiff's claims of retaliation under Title VII. To make a prima facie case for retaliation under Title VII. To make a prima facie case for retaliation, a plaintiff must show: (1) she engaged in a statutorily protected activity; (2) her employer took an adverse employment action; and (3) the adverse employment action was causally related to the protected activity. Little v. United Techs., Carrier Transicold Div., 103 F.3d 956,959 (11th Cir. 1997); Smith 145 F. Supp. 2d at 1300.

Plaintiff cannot show that she engaged in a statutorily protected activity."[T]he complaint which allegedly led to the retaliation must have related to conduct protected under Title VII." Brower v. Runyon, 178 F.3d 1002, 1006 (8th Cir. 1999). In Brower, for example, the court rejected the plaintiff's Title VII retaliation claim because it was undisputed that the plaintiff had not raised any issues of race, color, religion, sex, or national origin in her informal complaint with an equal opportunity counselor. Id. at 1006. Likewise here, Plaintiff's December 4 grievance was focused on safety issues and did not mention any issues relating to Plaintiff's membership in a protected class. Cf. Shannon v. Bellsouth Telecommunications, Inc., 292 F.3d 712, 716-717 (11th Cir. 2002) (evidence of denial of opportunities immediately following plaintiff's grievance about religious discrimination was sufficient to state Title VII retaliation claim). Because Plaintiff's December 11 grievance came after her termination, of course, it is not causally

connected to Plaintiff's claimed injuries. See Pipkins v. City of Temple Terr., 267 F.3d 1197, 1201 (11th Cor. 2001)(presenting similar reasoning).

Even if Plaintiff could be said to have made some complaint about treatment base on her sex, [8] Defendant has presented evidence showing that its employees knew only that Plaintiff had filed a grievance about unsafe working conditions on December 4, 2000; they did not have any knowledge of Plaintiff filing or voicing a discrimination-based complaint. (Brown Aff.¶ 11; Davis Aff.¶ 7; Henry Aff.¶ 10; LaFrenier Aff. ¶4). Furthermore, Ms. Brown recommended disciplinary action December 2, prior to Plaintiff's filing of her December 4 grievance. (Brown Aff.¶5.) In addition, Defendant has provided evidence of a legitimate, non-discriminatory reason for he termination, as set forth above.[9] Plaintiff has failed to show any evidence that these reasons were pretextual. Thus, Plaintiff's retaliation theory cannot withstand Defendant's motion.

Based on all the foregoing, Defendant's Motion for Summary Judgment is hereby **GRANTED** as to the Title VII claims.

Conclusion

Defendant's Motion for Summary Judgment [62-1] is hereby **GRANTED**; Plaintiff's Motion for Summary Judgment [97-1] is hereby **DENIED**; Defendant's Motion to Strike

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8. The Court finds no record evidence supporting this possibility.

9. To the extent Plaintiff alleges Defendant retaliated against her by failing to provide good references, her behavior on the job also provides a legitimate, non-discriminatory reason for failing to provide good references.

APPENDIX Vol.I. App. III

Plaintiff's Response and Opposition to Defendant's Motion for Summary Judgment [98-1] is hereby **DENIED**, but Defendants' alternative Motion to Strike from the Record certain portions of Plaintiff's Response [98-2] is hereby **GRANTED**; and Plaintiff's Dismissal of Complaint [107-1], which the Court construes as a motion to voluntarily dismiss without prejudice, is hereby **DENIED**.

SO ORDERED, this 20th day of July, 2004

Signed Richard W. Story
RICHARD W. STORY
UNITED STATES DISTRICT JUDGE

APPENDIX Vol. I., App. IV - OPINION OF THE ADMINISTRATIVE HEARING OFFICER DATED JULY 16, 2001

GEORGIA DEPARTMENT OF LABOR
APPEALS TRIBUNAL SUSSEX PLACE, SUITE 150
148 INTERNATIONAL BLVD., NE ATLANTA, GEORGIA 30303

DECISION OF THE ADMINISTRATIVE HEARING OFFICER-
DOCKET 6290A 2001
SSN: xxx-xx-xxxx

FSO 3100
APPELLANT- CLAIMANT

APPEAL FILED 03/26/2001
APPEAL HEARD 07/06/2001
RELEASE DATE 07/16/2001

EMPLOYER:

Dept. of Transportation
c/o SHEAKLEY/Uniservice
PO BOX 724086
ATLANTA GA 31139

MAIL TO:

IRENE L. STEPHENS
6265 TARA BLVD., LOT F-2
JONESBORO GA 30236

CLAIMANT:

IRENE L. STEPHENS
6265 TARA BLVD. LOT F-2
JONESBORO, GA 30236

JACK ROSENBERG, ATTY
100 ALABAMA ST., S.W.
SUITE 150
ATLANTA, GA 30303

APPENDIX Vol. I., App. IV

APPEARANCES: The hearing was conducted in person at the South Metro Career Center wherein the claimant participated and her Attorney, Mr. Jack Rosenberg. The employer was represented by Mr. Donald LaFrenier, District Administrative Officer, Mr. Darrell Williams, Construction Project Engineer and Mr. Rachel Brown, Area Engineer.

O.C.G.A. PROVISIONS and ISSUES INVOLVED:

OCGA Section 34-8-194(2) (A) - Whether the claimant's discharge or suspension was not a result of the claimant's failure to follow rules, orders, instructions, or for a failure to perform the duties for which hired and would be entitled to benefits; or the claimant was discharge or suspended for failure to follow rules, orders, instructions, or failure to perform the duties for which hired and would not be entitled to benefits. TO RE-QUALIFY: The individual must return to work and earn insured wages equal to ten (10) times the weekly benefit amount of the claim and the individual becomes unemployed through no fault on the part of the individual.

OCGA Section 34-8-157(b) - Whether the employer supplied separation information in a timely manner to the notice of the claim filing. The most recent employer is charged for any benefits properly paid and may be charged, even if the determination is later reversed on appeal, if the employer did not submit timely separation information.

FINDINGS OF FACT: The claimant was employed as a transportation engineer associate April 1, 1999 through December 27, 2000

The claimant was discharged by the district engineer for insubordination. The district engineer was not present for

testimony, however, the district administrative officer indicated the claimant refused to go to a meeting on December 1, 2000. She was suspended by the district manager and paid from December 8 though December 27, 2000 then discharged. The area engineer indicated the claimant did not follow a direct order from the district engineer. She needed to see a doctor because of safety issues. Her behavior was erratic.

The project manager/supervisor indicated the claimant did have some doctor's appointments but he did not question her why she was going to the doctor. He took her to the doctor on one occasion. She did fax a doctor's excuse to him to be off several days possibly through December 6 or December 8, 1999.

The claimant indicated she was under doctor's care and was in deep depression. She was recommended to see a psychiatrist. She was on four medications. She was suspended with pay for not reporting to the evaluation. She did send her supervisor a faxed doctor's statement to be off from December 1, through December 8, 2000. She was fired for not showing up for and evaluation on December 8, 2001 that the employer had asked her to go to. She was not given an opportunity to reschedule the appointment.

Timely separation information was provided as requested.

REASONS FOR DECISION: OCGA SECTION 34-8-194(2)(A) provides for a disqualification when an individual is discharged for failure to obey orders, rules, or instruction or for failure to discharge the duties for which employed. Before disqualification is imposed under this Section of the Law, it must be shown that the individual was at fault by deliberate action or conscious neglect which caused the failure to perform satisfactorily. This disqualification shall continue until such

time as the claimant secures subsequent employment and earns insured wages equal to ten (10) times the weekly benefit amount of the claim.

The claimant was discharged for insubordination. The claimant suffers from manic depression and was not able to report to the psychological evaluation the employer and scheduled. The employer has failed to show the claimant intentionally violated the policy. Therefore, the burden of proof has not been carried and a disqualification is not required.

OCGA Section 34-8-157(b) provides that benefits paid shall be charged against the account of the most recent employer. The amount charged shall be the lesser of benefits paid for the period of unemployment or, the amount of wages pain by such employer during the period beginning with the base period of the claim or the maximum benefit amount of the claim.

DECISION: The determination released by the Department March 12, 2001, disqualifying the claimant effective February 11, 2001, is hereby set aside. The claimant shall be entitled to unemployment insurance benefits effective February 11, 2001, under the provisions of OCGA Section 34080194(2). The claimant will be entitled to benefits for all weeks that claimant has met all the reporting and eligibility requirements as provided for under the provision of OCGA 34-8-195(a)(3).

The employer's tax account shall be charged the lesser of benefits paid for the period of unemployment or, the amount of wages paid during the period beginning with the base period of the claim or the maximum benefit amount of the claim, in accordance with OCGA Section 34-8-157(b).

Decision Released: JULY 16, 2001.

Signed Mary A. Smith
Mary A. Smith
Administrative Hearing Officer

Appeal Rights Expire: JULY 31, 2001

If you desire to appeal this decision, notify the office indicated below in writing. Appeal rights expire 15 days after decision is issued. An appeal filed by mail shall be considered filed on the date of the postmark cancellation shown on the envelope, or the actual date of receipt by the department in the absence of a legible postmark. A postage meter date will not be used to determine the date filed. An appeal filed by fax may be submitted to the fax number shown below and would be considered filed on the date received. vrs

GEORGIA DEPARTMENT OF LABOR
148 INTERNATIONAL BLVD., NE
BOARD OF REVIEW
SUSSEX PLACE - SUITE 801
ATLANTA, GEORGIA 30303

FAX 404.657.3500

This is to certify that this decision was mailed on the above RELEASE DAT BY -TR/MH_. THE POSTMARK DATE IS THE RELEASE DATE.

DOL-473A (2/95)

APPENDIX Vol. I., App. V- OPINION OF THE STATE OF GEORGIA, DEPARTMENT OF LABOR, OFFICE OF THE BOARD OF REVIEW, SUITE 801, 148 INTERNATIONAL BOULEVARD N.E., SUSSEX PLACE, ATLANTA, GEORGIA, DATED SEPTEMBER 11, 2001

BOR NO 6290B 2001
SSN: xxx-xx-xxxx

FSO 3100
APPELLANT EMPLOYER
APPEAL FILED 07/31/2001
RELEASE DATE 09/11/2001

EMPLOYER:

Dept. of Transportation
c/o SHEAKLEY/Uniservice
PO BOX 724086
ATLANTA GA 31139

MAIL TO:

ATLANTA LEGAL AID
ATTN Margaret L Kinnear
151 Spring St NW
ATLANTA, GA 30303

ATLANTA LEGAL AID
ATTN: Margaret L. Kinnear
151 Spring St. NW
Atlanta, GA 30303

CLAIMANT:

IRENE L. STEPHENS
6265 TARA BLVD LOT F-2.
JONESBORO, GA 30236

JACK ROSENBERG
100 ALABAMA ST SW
SUITE 150
ATLANTA GA 30303

After notice to the parties, the appeal in the above matter was considered by the Board of Review.

Upon careful consideration of the record evidence and the contentions of the parties, the Board of Review adopts the administrative hearing officer's findings and hereby affirms the decision.

Released at Atlanta, Georgia, SEPTEMBER 11, 2001.

THE BOARD OF REVIEW

Signature of Herbert C. Green
Herbert C. Green, Chairman

Signature of Xernona C. Brady
Xernona C. Brady, Member

Signature of Ruth F. Claiborne
Ruth F. Claiborne, Member

DECISION BECOMES
FINAL: SEPTEMBER 26, 2001

JUDICIAL REVIEW RIGHTS
EXPIRE: OCTOBER 11, 2001

Code Provisions For

APPEAL TO SUPERIOR COURT

Of

BOARD OF REVIEW DECISIONS

34-8-2 PROCEDURE FOR JUDICIAL REVIEW OF FINAL

DECISIONS OF BOARD OF REVIEW

(a) Any decision of the board of review, in the absence of a reconsideration as provided in subsection (d) of Code Section 34-8-192, shall become final 15 days after the date of notification or mailing. Judicial review shall be permitted only after any party claiming to be aggrieved thereby has exhausted his or her administrative remedies as provided by this chapter. The Commissioner shall be deemed to be a party to any judicial action involving any such decision and shall be represented in any such judicial action by the Attorney General.

(b) Within 15 days after the decision of the board of review has become final, any party aggrieved thereby may secure judicial review by filing a petition against the Commissioner in the superior court of the county where the employee was last employed. In the event the individual was last employed in another state, such appeal shall be filed in Fulton County, Georgia. Any other party to the proceeding before the board of review shall be made a respondent. The petition, which need not be verified but which shall state specifically the grounds upon which a review is sought, shall be served upon the Commissioner or upon such person as the Commissioner may designate, and such service shall be deemed completed service on all parties, but there shall be left with the party so served as many copies of the petition as there are respondents. The Commissioner shall mail one such copy to each such respondent. Within 30 days after the service of the petition, the Commissioner shall certify and file with the superior court all documents and papers and a transcript of all testimony taken in the matter, together with the board of review's findings of fact and decision therein. The Commissioner shall not be required to furnish any person with

a copy of the aforementioned documents, papers, or transcripts or the original of these items prior to the Commissioner's filing these items with the court. The Commissioner may also, in his or her discretion, certify to such court questions of law involved in any decision. As a guide for future interpretation of the law, when the Commissioner is aggrieved by any decision of the board of review or deems such decision contrary to the law and no other party enters an appeal therefrom, the Commissioner may, within 20 days after such decision has become final, appeal and certify to the superior court questions of law therein involved. The court shall consider and determine the same and enter a decree accordingly, which shall be subject to further appeal by the Commissioner. In any judicial proceeding under this Code section, the findings of the board of review as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the court shall be confined to questions of law. Such actions and the questions so certified shall be heard in a summary manner and shall be given precedence over all other civil cases except cases to which the state is a material party and cases arising under Chapter 9 of this title.

An appeal may be taken from the decision of the superior court to the Court of Appeals in the same manner as is provided in civil cases but not inconsistent with this chapter. No bond shall be required for entering an appeal.

Supreme Court, U.S.
FILED
JAN 3 1 2006
OFFICE OF THE CLERK

NO. 05-637

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2005

IRENE L. STEPHENS,

Petitioner,

vs.

GEORGIA DEPARTMENT OF TRANSPORTATION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR REHEARING OF DENIAL OF PETITION
FOR A WRIT OF CERTIORARI

Irene L. Stephens
1409 Back Cove Road
Virginia Beach, VA 23454
(757) 332-0636

QUESTIONS PRESENTED

1. WHETHER TITLE II OF THE AMERICANS WITH DISABILITIES ACT OF 1990, 42 U.S.C. 12131 ET SEQ., IS A PROPER EXERCISE OF CONGRESS'S POWER UNDER SECTIONS 1 AND/OR 5 OF THE FOURTEENTH AMENDMENT, AS APPLIED TO THE ADMINISTRATION OF THE DEPARTMENT OF TRANSPORTATION.

2. WHETHER, AND TO WHAT EXTENT, TITLE II OF THE AMERICANS WITH DISABILITIES ACT OF 1990, 42 U.S.C. 12131 ET SEQ., VALIDLY ABROGATES STATE SOVEREIGN IMMUNITY FOR SUITS BY STATE EMPLOYEES WITH DISABILITIES CHALLENGING DISCRIMINATION BY THE DEPARTMENT OF TRANSPORTATION.

3. WHETHER THE OFFICE OF THE CLERK OF THE SUPREME COURT OF THE UNITED STATES CIRCUMSCRIBED THE PETITIONER'S PRESENTATION OF EVIDENCE TO THE HONORABLE COURT BY REJECTING PETITIONER'S MOTION FOR CASE TO BE CONTINUED PENDING THE

COURTS DECISION OF MARSHALL V. MARSHALL, NO. 04-1544 NOTWITHSTANDING THE RECENT PROCEEDINGS AT THIS COURT IN THE CASES OF RIDEOUT v UNITED STATES, UNITED STATES v. FANFAN, UNITED STATES v.BOOKER, AND UNITED STATES v. PENARANDA TO THE DETRIMENT OF THE PETITIONER'S CASE.

4. WHETHER THE DISTRICT COURT FAILED TO ADJUDICATE THE PETITIONER'S CASE AND CLAIMS PROPERLY.

5. WHETHER THE DISTRICT COURT WAS REQUIRED TO HONOR THE JUDICIAL DETERMINATIONS AS MADE AND RENDERED BY THE GEORGIA DEPARTMENT OF LABOR AGAINST THE RESPONDENT IN THE PETITIONER'S FAVOR.

6. WHETHER THE ELEVENTH CIRCUIT COURT OF APPEALS SHOULD HAVE REVERSED THE JUDGMENT OF THE DISTRICT COURT.

7. WHETHER, UNDER THE CIRCUMSTANCE, EVIDENCE AND FACTS OF THE CASE, WOULD O.C.G.A. § 34-8-223(a) AND/OR

O.C.G.A. § 34-8-223(b) PROVIDE AN EXCEPTION TO TITLE 28 U.S.C. § 1738.

8. WHETHER OR NOT UNDER THE CIRCUMSTANCES, EVIDENCE AND FACTS OF THIS CASE DOES CONFIDENTIALITY EXIST AT THE TIME AN EMPLOYER SCHEDULES AN APPOINTMENT WITH A LICENSED HEALTH CARE PROVIDER, AND THE PROVIDER AGREES TO ACCEPT PAYMENT FOR THE SERVICES TO BE RENDERED TO THE EMPLOYEE UNDER AND PURSUANT TO THE EMPLOYEES HEALTH INSURANCE COVERAGE.

9. DID THE GEORGIA ATTORNEY GENERAL AND THE OFFICE OF THE ATTORNEY GENERAL EXCEED THE LIMIT OF THE POLICE POWERS OF THE STATE CONFERRED UPON THE STATE BY THE TENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND O.C.G.A. § 34-8-2 OR THE CONSTITUTION OF THE STATE OF GEORGIA

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CERTIFICATION OF COMPLIANCE WITH RULE 44

Petitioner, Irene L. Stephens, hereby certifies that this Motion is limited to intervening circumstances of substantial or controlling effect and otherwise is in compliance with Rule 44, and is presented in good faith and not for delay.

Irene L. Stephens

Irene L. Stephens
1409 Back Cove Road
Virginia Beach, VA 23454
(757) 332.0636

CERTIFICATION OF SERVICE AND VERIFICATION

Pursuant to Supreme Court Rules 29 and 33.1 and Title 28, U.S.C. Section 1746, I hereby state that I have this day served three (3) copies of PETITION FOR REHEARING OF DENIAL OF PETITION FOR A WRIT OF CERTIORARI, at the time of filing, upon G.Melton Mobley, Jr, Lokey, Mobley & Doyle, L.L.C., 8425 Dunwoody Place, Atlanta, GA 30350, by placing a copy of the same into an envelope with no less than first-class postage prepaid to ensure delivery and placing the same into the United States Postal Service on this 15th day of FEBRUARY, 2006.

Irene L. Stephens
Affiant

Irene L. Stephens
1409 Back Cove Road
Virginia Beach, VA 23454

CERTIFICATION OF SERVICE AND VERIFICATION

Pursuant to Supreme Court Rule 14.1(e)(v) and Title 28, U.S.C. Section 1746, I hereby state that I have this day served one (1) copy of PETITION FOR REHEARING OF DENIAL OF PETITION FOR A WRIT OF CERTIORARI, at the time of filing, upon Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530-0001, by placing a copy of the same into an envelope with no less than first-class postage prepaid to ensure delivery and placing the same into the United States Postal Service on this 15th day of FEBRUARY, 2006.

Irene L. Stephens
Affiant

Irene L. Stephens
1409 Back Cove Road
Virginia Beach, VA 23454

RELEVANT PROCEEDINGS

The judgment of the Eleventh Circuit Court of Appeals in Atlanta, Georgia was entered on May 31, 2005. Petitioner sought a timely rehearing of the decision by the panel and sought an en banc determination which was denied on August 17, 2005.

Petitioner filed Petition for Writ of Certiorari on November 14, 2005 and was placed on the docket November 18, 2005 as No. 05-637. The due date for a brief in opposition was December 19, 2005. On December 14, 2005 the Respondents counsel filed a waiver with the court intending not to file a response on behalf of the Respondent, at least three days early. On December 27, 2005, the Office of the Clerk of the Supreme Court of the United States received Petitioner's motion for case to be continued pending the courts decision of Marshall v. Marshall, No. 04-1544. On December 29, 2005, the Chief Deputy Clerk of the court

returned the same to the petitioner. On January 3, 2006, the Petitioner received the December 29, 2005 letter from the Chief Deputy Clerk This case was scheduled for conference on January 6, 2006 and on or about January 9, 2006 the Court denied the Petitioner's petition for a writ of certiorari.

STATEMENT OF THE REASONS FOR GRANTING REHEARING OF THE DENIAL OF THE PETITION FOR A WRIT OF CERTIORARI

After denying the Petitioner's petition for certiorari the Honorable Court on January 10, 2006 decided the cases of United States v. Georgia and Goodman v. Georgia, 546 U.S. ____ (2006)((U.S. March 9, 2005)(No. 04-1203)(Goodman March 9, 2005)(No. 04-1236). These substantial developments all occurred after this Court denied the petition for a writ of certiorari. The Petitioner's case had received the same consideration, i.e. one more day to consider the petitioners petition for certiorari by this Honorable Court in this case, as the cases of United States v.

Georgia and Goodman v. Georgia, the Petitioner's petition for certiorari would have been denied after the Honorable court entered judgment in U.S. v. Georgia and Goodman v. Georgia, 546 U.S. _____(2006) on January 10, 2006. See App. C., p. 17a-18a..

The United States District Court for the Northern District of Georgia stated in its April 21, 2004 order:

> " 1. Soverign Immunity
>
> Plaintiff sues on the Georgia Department of transportation. States and their agencies enjoy sovereign immunity pursuant to the Eleventh Amendment to the United States Constitution absent a waiver by the State or valid congressional abrogation. Pennhurst State Sch. & Hosp. V. Halderman, 465 U.S. 89, 99 1000, 104 S.Ct. 900, 79 L. Ed. 2d 67 (1984). As an arm of the state, Defendant is entitled to the same sovereign immunity of the state itself. Robinson v. Ga. Dep't of Transp., 966 F.2d 637, 640 (11th Cir. 1992).
>
> Congress did not abrogate Eleventh Amendment immunity for claims brought under § 1983, Quern v. Jordan, 440 U.S. 332, 99 S.Ct. 1139, 59 L.Ed. 2d 358 (1979); the

> ADEA, Kimel v. Fla. Bd. of Regents, 528 U.S. 62, 120 S.Ct. 631, 145 L.Ed. 2d 522 (2000); or the ADA, Bd. Of T'ees of the Univ. of Ala. V. Garrett, 531 U.S. 356, 121 S.Ct. 955, 148 L. Ed. 2d 866 (2001)(Title I), Williamson v. Ga Dep't of Human Resources, 150 F. Supp. 2d 1375 (S.D. Ga. 2001)(Title II); see also Ass'n for Disabled Ams., Inc. v. Fla.Int'l Univ., 178 F.Supp.2d 1291, 1293-94 (S.D. Fla. 2001)(collecting case in title II context). Accordingly, Defendant is entitled to summary judgment on the basis of sovereign immunity with respect to all of Plaintiff's claims except those arising under Title VII. See Fitzpatrick v. Bitzer, 427 U.S. 445, 99 S.Ct. 2666, 49 L.Ed. 2d 614 (1976)(holding Congress expressly and validly abrogated state sovereign immunity under title VII). Accordingly, Defendant's Motion for Summary Judgment [70-1] is hereby **GRANTED in part**." See Appendix A, p. 12a-13a

On May 31, 2005, the United States Court of Appeals for the Eleventh Circuit stated in an unpublished opinion:

> "A. Sovereign Immunity
>
> The district court granted summary judgment to the DOT on Stephens' § 1983, ADA, and

> ADEA claims after finding that the DOT had immunity pursuant to the Eleventh Amendment. Stephens brought her claim solely against the Georgia department of transportation. As an arm of the state, the DOT is entitled to the same sovereign immunity of the state itself. Robinson v. Ga. Dep't of Transp., 966 F.2d 637, 640 (11th Cir. 1992). Congress has not abrogated immunity for claims brought pur .ant to § 1983, the ADEA, or the ADA. See id. (holding that the Eleventh Amendment barred plaintiff's § 1983 against georgia DOT); Kimel v. Fla Bd. of Regents, 528 U.S. 62, 120 S.Ct. 631 (2000)(holding that the ADEA did not validly abrogate eleventh Amendment immunity); Bd. Of Trs. of Ala. V. Garrett, 531 U.S. 356, 121 S.Ct. 955 (2001)(holding that state agencies were entitled to Eleventh Amendment immunity from employes' claims brought pursuant to the ADA). Therefore, the district court's grant of summary judgment on these claims was proper" See Pet. App. Vol.1, p.8, Nov.14, 2005.

It is the Petitioner's contention the Eleventh Circuit did not address the sufficiency of Petitioner's allegations under Title II. Instead, relying on its prior decision in Robinson v. Ga. Dep't of Transp., 966 F.2d 637, 640 (11th

Cir. 1992), the Court of Appeals affirmed the District Court's holding that Petitioners Title II claims for money damages against the Department of Transportation were barred by sovereign immunity.

The United States District Court stated in its April 21, 2004 order:

> "The Court cautions the parties that because Defendant is entitled to immunity with respect to the § 1983, ADEA, and ADA claims, the Court will not consider evidence or arguments related to Plaintiff's constitutional, age, or disability claims." See App. A, p.13a. § 2, ¶ 2.

It is the Petitioners contention the District Court severely circumscribed the Petitioner's presentation of evidence. See App. D., p.30a- 31a.

DISCUSSION

The December 29, 2005 letter from C. Vasil, Chief Deputy Clerk of the Court to the petitioner states:

"The motion to defer consideration of the above-

entitled petition for a writ of certiorari was received December 27, 2005, and is herewith returned. The Court does not make public that a pending case is being held for a case in which certiorari was granted, nor does the Court act on motions to hold a case for a granted case." See App. E., p. 35a.

The cases of United States v. Penaranda, (U.S. July 13, 2004)(No. 04-59), United States v. Fanfan, (U.S. July 21, 2004)(No. 04-105), United States v. Booker, 543 U.S. ____ (2005), (U.S. July 21, 2004)(No. 04-104) were docketed on July 13, 2004 and July 21, 2004 at this court.

On July 23, 2004 a petition for rehearing was filed in the case of Rideout v. United States (U.S. March 17, 2004)(No. 03-9402). See Appendix G, p. 50a. Page 5 of the July 23, 2004 Rideout petition for rehearing states:

> "At a minimum, a final decision on Mr. Rideout's certiorari petition should await final disposition of Booker, Fanfan, and Penaranda,

followed by remand to the United States Court of Appeals for the Fourth Circuit for further consideration."

After reviewing the docket sheets for the cases of United States v. Penaranda, United States v. Fanfan, United States v. Booker it appears as if the Court did defer or hold a decision in Rideout v. United States (U.S. March 17, 2004)(No. 03-9402) until the Courts decision in the cases of Booker, Fanfan, and Penaranda.

Petitioner's respectfully advances that it is unfortunate that a party proceeding before this Court must file a petition versus a motion in order to request the Court to defer or hold a case for another case presently before the Honorable Court. Again, if the Petitioner's case had received the same consideration, i.e. one more day to consider petition for certiorari by this Honorable Court, as the case of Rideout v. United States (U.S. March 17, 2004)(No. 03-9402), the Petitioner's petition for certiorari would have

been denied after the Honorable court entered judgment in U.S. v. Georgia and Goodman v. Georgia, 546 U.S. ____(2006) on January 10, 2006.

It is the petitioners contention when the Respondents counsel filed the waiver with the court intending not to file a response on behalf of the Respondent at least three days early the instant civil action resulted in the instant case being assigned to the conference of January 6, 2006 versus January 13, 2006. Obviously, after the courts decision in the cases of United States v. Georgia and Goodman v. Georgia, 546 U.S. ____ (2006)((U.S. March 9, 2005)(No. 04-1203)(Goodman March 9, 2005)(No. 04-1236).

CONCLUSION

Pursuant to Supreme Court Rule 29.4(b); Title 28 U.S C. § 2403(a) may apply to the instant case and the lower federal courts in Georgia did not certify to the Attorney General the fact that the constitutionality of an Act of

Congress was drawn into question. After more than three years of litigation with the Respondent it is the petitioners contention that the instant case hinged on one day before this Honorable Court and the recent clarification of the Honorable Courts position with respect to Title II of the Americans with Disabilities Act of 1990 and the Fourteenth Amendment as rendered in cases of United States v. Georgia and Goodman v. Georgia warrants rehearing on the denial of petitioner's certiorari petition.. At a minimum, a final decision on petitioners certiorari petition should await final disposition of Marshall v. Marshall, (Marshall May 17, 2005)(04-1544), followed by remand to the United States Court of Appeals for the Eleventh Circuit for further consideration and/or further consideration with respect to United States v. Georgia and Goodman v. Georgia

Respectfully submitted,

Irene L. Stephens

Irene L. Stephens
1409 Back Cove Road
Virginia Beach, VA 23454
(757) 332.0636

APPENDIX A -
OPINION OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA DATED APRIL 21, 2004

[Filed April 23, 2004]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IRENE L. STEPHENS	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION NO.
v.	:	
	:	1:02-CV-1608-RWS
GEORGIA DEPARTMENT OF TRANSPORTATION	:	
	:	
Defendant.	:	

ORDER

Plaintiff Irene L. Stephens filed this employment discrimination suit against her former employer, Defendant Georgia Department of Transportation "Defendant" or "GDOT"). Now before the Court for consideration are: Defendant's Motion for Summary Judgment [62-1]; Plaintiff's Motion for Reconsideration [65-1]; Plaintiff's Motion for Enlargement of Time [66-1]; Plaintiff's Motion to Extend Time [67-1]; Defendant's Motion to Dismiss [70-1]; Plaintiff's Motion to Strike [81-1]; and a Consent Motion to Extend Discovery Until 5/10/2004 [88-1]. Having considered the entire record, the Court enters the following Order.

I. Procedural History

Plaintiff filed this case on June 11, 2002, at which time it was assigned to Judge Beverly B. Martin. Plaintiff filed an amended Complaint on January 9, 2003; Judge martin denied Defendant's Motion to dismiss thereafter.[1] The case was assigned to a four-month discovery schedule, and discovery was set to end on September 8, 2003. At the parties' joint request, the Court extended the discovery period through November 7, 2003 by an order entered September 10, 2003. The Court again extended discovery until January 7, 2004 by a Consent Order entered November 4, 2003.

Meanwhile, Plaintiff moved to recuse Judge Martin. That Motion was granted and this case was reassigned to the undersigned. Defendant filed another motion to extend the discovery period because Plaintiff refused to be deposed when she appeared for her December 10, 2003 deposition. Defendant also filed a motion to compel Plaintiff's deposition and to compel Plaintiff fo produce certain documents. Plaintiff thereafter filed a motion to amend the complaint and two motions to extend discovery. These two motions to extend discovery were based on (1) Plaintiff's expectation that she would be allowed to amend the complaint; and (2) Plaintiff's argument that Defendant had failed to comply with Federal Rule of Civil Procedure 26(a)(2)(B) in its notice to depose Plaintiff's expert.

By an Order entered February 9, 200 63-1](the "February 9 Order), this Court denied Plaintiff's motion to amend, mooting her request to extend discovery on her proposed additional claims. The Court also rejected Plaintiff's argument

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[1] The Motion to Dismiss was based on Federal Rules of Civil procedure 41(b) and 12(e). Defendants did not move to dismiss for failure to state a claim upon which relief could be granted under Rule 12(b)(6).

that Defendant had failed to comply with Rule 26(a)(2)(B). Further, the Court extended discovery so that Defendant could take Plaintiff's deposition and the Court ordered Plaintiff to produce the documents Defendant had move to compel within ten days of the entry of the Order. Finally, the Court granted Plaintiff a leave of absence from February 9, 2004 until February 29, 2004. The Court made clear, however, that while Plaintiff would not be required to appear for a deposition or hearing during that time, she would not be excused from timely filing "any pleadings, motions, briefs, or responses that may be due during the period of her leave." (Order of Feb.9, 2004 at 7; see also id. At 8 n.1 (further emphasizing that Plaintiff was not excused from producing documents due to her leave of absence).)

Several of the now-pending motions arise from issues related to the February 9 Order. Also pending is Defendant's Motion for Summary Judgment, which Defendants timely filed following the close of the discovery period as was scheduled prior to entry of the February 9 order.

II. Motion for Reconsideration

Plaintiff asks the Court to reconsider its ruling in the February Order, wherein the Court denied her motion to amend the complaint. A motion for reconsideration should not be used to reiterate arguments that have been made previously, but "should be reserved for certain limited situations, namely the discovery of new evidence, an intervening development or change in the law, or the need to correct a clear error or prevent a manifest injustice." Deerskin Trading Post, Inc. V. United Parcel Serv. Of Am., Inc., 972 F.Supp 665,674 (N.D. Ga. 1997). Moreover, a motion for reconsideration may not be used to offer new legal theories or evidence that could have been presented in a previously filed motion or response, unless a reason is given for failing to raise the issue at an earlier stage in the litigation. Escareno v. Noltina Crucible & Refractory Corp., 172 F.R.D. 517, 519 (N.D. Ga. 1994)(citing O'Neal v.Kennamer, 958 F.2d

1044, 1047 (11th Cir. 1992)).

Here, Plaintiff's motion argues the merits of the claims she wished to add to this case, rather than providing bases for amendment. She either reiterates arguments that she made previously or presents new arguments without providing any reason for failing to do so earlier. This showing does not meet the standards for reconsideration and accordingly, Plaintiff's motion for reconsideration and accordingly, Plaintiff's Motion for Reconsideration [65-1] is hereby **DENIED**.

Plaintiff argues that "if the Honorable Court chooses to deny Plaintiff the right to [amend her complaint]," she will "[f]ile a lateral Federal Civil Rico Complaint, incorporation Plaintiff breach of contract claims, naming the instant Defendant, The Office of the Attorney General, Thurbert Baker, Bryan K. Webb and Mr. Ralph William Ellis, and G. Melton Mobley, as well as other persons and parties who have assisted the Defendant in their fraudulent conduct." (Pl.'Mot. For review and Reconsideration [565-1] at 23.) Plaintiff argues that allowing her to amend the complaint will thus save judicial time and resources. (Id. At 24.) She further writes that if the Honorable Court chooses to deny Plaintiff's instant motion, the Plaintiff will legally expand the litigation against the Defendant." (Id. at 24 n.9.)

This Court was well within its discretion in denying Plaintiff's motion to amend the complaint; of course, Plaintiff may challenge this decision on appeal. Generally, a party may not make an end-run around the denial of a motion to amend by attempting to file a new case asserting the proposed amendment; this practice is governed by the doctrine of res judicata. Hrabe v. Paul revere Life Ins. Co., 76 F. Supp. 2d 1297, 1304 (M.D. Ala. 1999); United States v. McGann, 951 F. Supp. 372, 379 (E.D.N.Y. 1997).

Plaintiff's motion to amend sought to add breach of contract claims stemming from the circumstances surrounding her job with Defendant, fraudulent inducement based on her acceptance of employment with Defendant and intentional infliction of emotional distress arising from Defendant's actions

surrounding her termination. From her Motion for Reconsideration, it appears that Plaintiff plans to bring a new case alleging similar claims arising out of the same facts at issue in this case. Base on Plaintiff's representation, it appears that Plaintiff would not be entitled to file the new suit she describes.

The Court is concerned that Plaintiff is unable to curb her propensity for making frivolous filings. Indeed, this Court has already had occasion to enjoin Plaintiff from removing cases to this Court without obtaining leave from the Court. See Equity Mgmt. Co. v. Stephens, No. 1:03-CV-1611-RWS (N.D.Ga. entered June 30, 2003). The Eleventh Circuit recognizes this Court's authority to impose restrictions on Plaintiff's ability to file. See generally Procup v. Strickland, 792 F.2d 1069 (11th Cir. 1986)(outlining potential restrictions). As Procup explained: "Federal courts have both the inherent power and the constitutional obligation to protect their jurisdiction from conduct which impairs their ability to carry out Article III functions . . . The court has a responsibility to prevent single litigants from unnecessarily encroaching on the judicial machinery needed by others." Id. at 1073-74 (internal citations omitted).

Based on Plaintiff's representations to the Court about her desire to file RICO and contract claims against the Defendant, and her other conduct in this case and in previous cases, the Court finds that it is necessary to further enjoin Plaintiff to protect the Court's jurisdiction. Accordingly, the Court hereby **ENJOINS** Plaintiff Irene L. Stephens from attempting to open a new action arising out of the facts in this case or as set forth in Plaintiff's Motion to Amend [52-1] against Defendant, the Georgia Office of the Attorney General, Thurbet Baker, Bryan K. Webb, Ralph William Ellis, and/or G.Melton Mobley without complying with the following procedures. If Plaintiff wishes to file such a case, she must submit a Petition for leave fo File, along with a proposed document for filing and a copy of this Order, to this Court for consideration. The Clerk is hereby **DIRECTED** that if Plaintiff submits such a Petition, the Clerk shall forward the Petition and accompanying documents to the undersigned for consideration. The Clerk is further

DIRECTED not to open a case file in such circumstances until this Court issues an Order so directing. If Plaintiff fails to comply with this Order by submitting a document for filing without a Petition and copy of this Order, the Clerk is **DIRECTED** to return the document to Plaintiff.

As a related matter, Plaintiff's Motion to Strike Defendant's Response to Plaintiff Motion for Reconsideration [81-1] offers no basis for so doing and is hereby **DENIED**. Plaintiff has also submitted a Supplement to her Motion to Strike [85-1]; this document is not contemplated by the Local Rules and is not accompanied by a motion requesting leave to file it; accordingly, the Court disregards it. N.D. Ga. Local R.7.1.

III. Plaintiff's Motions for Extensions and Defendant's Motion to Dismiss

As described above, Plaintiff was required to produce the documents requested in Defendant's Motion to Compel[43-1] within ten days of the February 9 Order, by February 24, 2004. On February 20, 2004, however, Plaintiff requested an extension of time until March 5, 2004, for filing those documents. Defendants filed a Motion to Dismiss because of Plaintiff's failure to obey the February 9 Order. The Court addresses each of these issues in turn.

A. Plaintiff's Motion for Enlargement

In her Motion for Enlargement [66-1], Plaintiff appears to argue that she should not be required to comply with the ten-day deadline because she also needed to file a motion for reconsideration within ten days of the February 9 Order.[2]

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[2] The Court notes that both parties appear to have miscalculated the ten-day time frame. See N.D. Ga. Local Rule 6.1A.

Federal Rule of Civil procedure 6(b)(1) provides that the court may grant an enlargement of time "for cause shown" if the request is made prior to "the expiration of the period originally prescribed or as extended by a previous order." Good cause requires at least as much as excusable neglect. Williams v. Publix Warehouse, 151 F.R.D. 428, 431 (M.D.Fla. 1993). The need to file another document within the same prescribed period does not constitute "cause" within the meaning of this Rule. See McLaughlin v. City of LaGrange, 662 F.2d 1385, 1387 (11th Cir. 1981)(per curiam)(a busy schedule does not amount to excusable neglect). Plaintiff's reasons for needing as extension are particularly inadequate given the Court's emphasis on her deadlines in the February 9 Order. Accordingly, Plaintiff's Motion for Enlargement is hereby **DENIED**. Plaintiff is **ORDERED** to produce the documents described in the February 9 Order immediately if she has not done so already.

B. Defendant's Motion to Dismiss

Defendant's Motion to Dismiss [70-1] is brought pursuant to Federal Rule of Civil Procedure 37 and is based on Plaintiff's failure to produce the compelled documents within the time frame ordered. Rule 37(b)(2) provides that a court may impose sanctions for failing to comply with a court order compelling discovery. A district court has discretion to dismiss a complaint for failure to comply with a court order when the party's recalcitrance is due to willfulness, bad faith, or fault. Phipps v. Blakeney, 8 F.3d 788, 790 (11th Cir. 1993); see also Gratton v. Great Am. Communications, 178 F.3d 1373, 1374 (11th Cir. 1999). This "most severe" sanction is disfavored and it is good practice for a district court to make findings as to why a lesser sanction will not suffice. Phipps, 8 F.3d at 791. Here, Defendant has not requested lesser sanctions and has not described why lesser sanctions , such as imposing costs upon

Plaintiff, would not suffice. Although Plaintiff's defiance of the February 9 Order causes great concern to this Court, the Court declines to impose the sanction of dismissal at this time. Plaintiff is admonished, however, that her failure to produce the documents as required herein could result in the Court holding her in contempt and requiring her to pay attorney's fees, among other sanctions, in the future. Accordingly, Defendant's Motion to Dismiss [70-1] is hereby **DENIED with a right to refile**.

As a related matter, Plaintiff's Motion to Enlarge Time to Respond to Defendant's Motion to Dismiss [78-1] is hereby **DENIED as moot** to the extent the Plaintiff's Motion is directed at Defendant's Motion to Dismiss [70-1].[3]

IV. Defendant's Motion for Summary Judgment
A. Plaintiff's Motions to Extend Time to Respond

In Plaintiff's Motion to Extend time to Respond to Defendant's Motion for Summary Judgment [67-1], Plaintiff seeks an extension of time until May 10, 2004, within which to respond to Defendant's Motion for Summary Judgment. As described above, the Court was very clear in its February 9 Order that Plaintiff would not be excused from timely filing "any pleadings, motions, briefs, or responses that may be due during the period of her leave." (Order of Feb. 9, 2004 at 7.) Defendant filed a Motion for summary Judgment on January 27, 2004. Plaintiff did not respond to the Motion within the twenty days required by the Local Rules. Instead, on February 26, 2004, Plaintiff filed the now-pending Motion to Extend Time.

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[3].Plaintiff's Motion for Enlargement [78-1] is also directed to her time to respond to Defendant's Motion for Summary Judgment and is discussed *infra* Part IV.A.

In her Motion, Plaintiff states that she is proceeding pro se and needs additional time to gather evidence. Because the Court extended discovery in its February 9 Order, moreover, Plaintiff submits that it is obvious that the "total legal picture has not been obtained" by either party. (Pl.'s Mot. to Extend [67-1] at 2.) According to Federal Rule of Civil Procedure 6(b)(2), the court for "cause shown" may grant an enlargement of time after the expiration of a deadline "where the failure to act was the result of excusable neglect." Plaintiff has shown neither good cause nor excusable neglect. Although the Court extended discovery, that extension was for Defendant's benefit because Plaintiff had refused to cooperate during her deposition and refused to respond to certain discovery.[4]
Further, Plaintiff has not identified what evidence she needs or provided a justification for failing to obtain that evidence within the multiple extensions of the discovery period that the Court has already granted. As noted above, moreover, a busy schedule does not amount to excusable neglect. McLaughlin, 662 F.2d at 1387. Nor, for that matter, does a party's pro se status entitle her to disregard deadlines. See Clark v. Bibb County Bd. of Educ., 174 F. Supp. 2d 1369, 1371 (M.D. Ga. 2001)(the Federal Rules of Civil Procedure must nevertheless be followed even by pro se litigant); see generally In re Belcher, 293 B.R. 265 (Bankr. N.D. Ga. 2001)(inexperience attorney proceeding pro se did not show excusable neglect where she misunderstood filing deadline and ha family responsibilities); Busch v. County of Volusia, 189 F.R.D. 687 (M.D. Fla. 1999)(finding no excusable neglect, even

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[4].In the February 4 order, the Court noted that Plaintiff had also made two request for an extension of discovery. Because the Court extended discovery for Defendants, the disposition of Plaintiff's motions was "granted;" a review of the bases for her notions, however, reveals that Plaintiff was not entitled to any additional discovery during this extension.

accounting for plaintiff's pro se status, for filing motion for new trial several months late). Because Plaintiff has failed to show good cause or excusable neglect, the Court **DENIES** Plaintiff's Motion to Extend Time [67-1]. Accordingly, the Court treats Defendant's Motion for Summary Judgment as unopposed. N.D. Ga. Local R. 7.1.B.

Relatedly, Plaintiff in her Motion to Enlarge Time [78-1] request an extension of time within which to respond to Defendant's Response to her Motion to Extend Time to Respond to Defendant's Motion for Summary Judgment. In essence, Plaintiff seeks an extension of time within which to file a reply to her own motion. Plaintiff raises no grounds for such an extension different from those already discussed, and-as set forth above-the parties have adequately addressed the issues in the Motion [67-1] and the Response [76-1]. Accordingly, Plaintiff's motion to Enlarge Time [78-1] is hereby **DENIED** as it related to a reply to Defendant's response to her Motion to Extend Time [67-1].

B. Standards on Motion for Summary Judgment

Summary judgment is appropriate only when the pleadings, depositions, and affidavits submitted by the parties show that no genuine issue of material fact exists and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The court should view the evidence and any inferences that may be drawn in the light most favorable to the non-movant. Adickes v. S.H.Kress & Co. ,398 U.S. 144, 158-59, 90 S.Ct. 1598, 26 L.Ed. 2d 142 (1970). The party seeking summary judgment must first identify grounds that show the absence of a genuine issue of material fact. Celotex Corp. V. Catrett, 477 U.S. 317, 323-24, 106 S.Ct. 2548, 91 L.Ed. 2d 265 (1986). The burden then shifts to the non-movant, who must go beyond the pleadings and present affirmative evidence to show that a genuine issue of material fact does exist. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 257, 106 S.Ct. 2505, 91 L.Ed. 2d 202 (1986).

Even if a motion for summary judgment is unopposed, the movant must nevertheless show it is entitled to judgment on the merits, based on evidentiary materials in the record. See Dunlap v. Transam. Occidental Life Ind. Co., 858 F.2d 629, 632 (11th Cir. 1988)(district court did not err in treating motion for summary judgment as unopposed where it considered the merits of the motion). The district court "need not sua sponte review all of the evidentiary materials on file at the time the motion is granted," but it must at least review all those submitted in support of the summary judgment motion. United States v. 5800 S.E. 74th Ave., -F.3d-, 2004 WL 575094, at *2(11th Cir. Mar. 24, 2004). A district court's order granting an unopposed motion for summary judgment must indicate that the merits were considered. Id.

As described below, the Court determines that with respect to several of Plaintiff's claims, Defendant has clearly shown an entitlement to judgment as a matter of law. However, because of plaintiff's refusal to be deposed, there was not a full record available to Defendant at the time it filed its Motion for Summary Judgment. The Court finds that it will best serve the ends of justice to reserve ruling on some of Plaintiff's claims so that the parties may have an opportunity to more fully build the factual record.

C. Brief Background

Beginning in April 1999, Plaintiff was employed by Defendant as a Transportation Engineer Associate.[5] After numerous incidents in the fall of 2000, she was terminated for

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[5]The Court will set out a detailed discussion of the facts when it issues an Order on Plaintiff's remaining claims. The viability of the claims for which judgment will be entered herein does not hinge on the facts

insubordination, effective December 27, 2000. In Count One of the Amended Complaint, Plaintiff alleges violations of her due process and equal protection rights. In Count two, Plaintiff alleges employment discrimination. In Count Three, Plaintiff alleges "retaliation for exercising a legal right." Reading the Amended complaint broadly and in deference to Plaintiff's pro se status, the Court considers her to have alleged:(1) violation of due process and equal protection rights pursuant to 42 U.S.C. § 1983; (2) violation of Title VII of the Civil Rights Act of 1964; (3) violation of the Americans with Disabilities Act ("ADA"); and (4) violation of the Age Discrimination Employment Act ("ADEA").

D. Discussion

1. Soverign Immunity

Plaintiff sues on the Georgia Department of transportation. States and their agencies enjoy sovereign immunity pursuant to the Eleventh Amendment to the United States Constitution absent a waiver by the State or valid congressional abrogation. Pennhurst State Sch. & Hosp. V. Halderman, 465 U.S. 89, 99 1000, 104 S.Ct. 900, 79 L. Ed. 2d 67 (1984). As an arm of the state, Defendant is entitled to the same sovereign immunity of the state itself. Robinson v. Ga. Dep't of Transp., 966 F.2d 637, 640 (11th Cir. 1992).

Congress did not abrogate Eleventh Amendment immunity for claims brought under § 1983, Quern v. Jordan, 440 U.S. 332, 99 S.Ct. 1139, 59 L.Ed. 2d 358 (1979); the ADEA, Kimel v. Fla. Bd. of Regents, 528 U.S. 62, 120 S.Ct. 631, 145 L.Ed. 2d 522 (2000); or the ADA, Bd. Of T'ees of the Univ. of Ala. V. Garrett, 531 U.S. 356, 121 S.Ct. 955, 148 L. Ed. 2d 866 (2001)(Title I), Williamson v. Ga Dep't of Human Resources, 150 F. Supp. 2d 1375 (S.D. Ga. 2001)(Title II); see also Ass'n for Disabled Ams., Inc. v. Fla.Int'l Univ., 178 F.Supp.2d 1291, 1293-94 (S.D. Fla. 2001)(collecting case in title II context). Accordingly, Defendant is entitled to summary judgment on the

basis of sovereign immunity with respect to all of Plaintiff's claims except those arising under Title VII. See Fitzpatrick v. Bitzer, 427 U.S. 445, 99 S.Ct. 2666, 49 L.Ed. 2d 614 (1976)(holding Congress expressly and validly abrogated state sovereign immunity under title VII). Accordingly, Defendant's Motion for Summary Judgment [70-1] is hereby **GRANTED in part**.

2. Title VII

Title VII makes it unlawful to discriminate against any individual with respect to her employment because of the individual's race, color, religion, sex, or national origin. 42 U.S.C. § 2000e-(a). Reading the Amended Complaint liberally, it appears that plaintiff alleges several theories cognizable under a Title VII claim: (1) that she was denied a transfer to the Office of Bridge Design and ultimately terminated because of her sex; (2) that she was a victim of disparate treatment; and (3) the she was retaliated against because of her sex.

As described above, the Court will afford the parties an opportunity to supplement the record on these Title VII claims **ONLY**. Thus, Plaintiff may have ten days for the entry of this Order within which to file a response to Defendant's Motion for Summary Judgment [70-1] on the Title VII claims. Defendant may have ten days thereafter within which to file a Reply on the Title VII claims. Both parties may attach to these documents any new evidence that has been obtained during the discovery extension. The Court cautions the parties that because Defendant is entitled to immunity with respect to the § 1983, ADEA, and ADA claims, the Court will not consider evidence or arguments related to Plaintiff's constitutional, age, or disability claims.

Conclusion

Defendant's Motion for Summary Judgment [62-1] is hereby **GRANTED in part**; the Court hereby **RESERVES RULING** as to Plaintiff's Title VII claims. Plaintiff shall have

ten days from the entry of this Order within which to file a response to defendant's Motion for Summary Judgment [70-1]; Defendant shall have ten days thereafter within which to file a Reply.

Plaintiff's Motion for Reconsideration [65-1] is hereby **DENIED.** Plaintiff is **ENJOINED** as set forth *supra* pages 7-8.

Plaintiff's Motion for Enlargement of Time [66-1] is hereby **DENIED**; Plaintiff is **ORDERED** to produce the documents described in the February 9, 2004 Order immediately if she has not done so already. Plaintiff's Motion to Extend Time [67-1] is hereby **DENIED**. Defendant's Motion to Dismiss [70-1] is hereby **DENIED with a right to refile**. Plaintiff's motion to Enlarge time [78-1] is hereby **DENIED as moot**. Plaintiff's Motion to Strike [81-1] is hereby **DENIED**. The Consent Motion to Extend Discovery Until 5/10/2004 [88-1] is hereby **DENIED as moot**.

SO ORDERED, this 21th day of April, 2004

s/
RICHARD W. STORY
UNITED STATES DISTRICT JUDGE

APPENDIX B -
OPINION OF THE ELEVENTH CIRCUIT
COURT OF APPEALS DATED SEPTEMBER 10, 1999

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 98-9573
Non-Argument Calendar

D.C. Docket No. 98-01583-1-CV-JEC

AUBREY S. WHELCHEL,

Plaintiff-Appellant,

versus

CITY OF COVINGTON, GEORGIA
CITY COUNSEL OF COVINGTON, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

(September 10, 1999)

Before TOJOFLAT, BLACK and HULL, Circuit Judges

PER CURIAM:

Appellant Aubrey Whelchel appeals the district court's dismissal of his action brought pursuant to 42 U.S.C. § 1983 alleging that Appellees City of Covington, City Counsel of Covington, building inspector James Berry, Judge John Ott, and Superior Court of Newton County violated his constitutional rights under the First, Fifth, and Fourteenth Amendments of the United States Constitution as well as his rights under the Georgia State Constitution. Based upon our review of the record, we conclude the district court did not err in dismissing Appellant's action because we lack jurisdiction to review Appellant's claims pursuant to the Rooker-Feldman doctrine.

Under the Rooker-Feldman doctrine, federal courts do not have jurisdiction over challenges to final judgments of a state court judicial proceeding even if those challenges allege that the state court's action was unconstitutional. District of Columbia Court of Appeals v. Feldman, 103 S. Ct. 1303, 1317 (1983); Rooker v. Fidelity Trust Co., 44 S. Ct. 149, 150 (1923). This doctrine applies not only to bar claims actually raised in the state court proceedings, but also bar claims that are inextricably intertwined with the state court's judgment. Powell v. Powell, 80 F.3d 464, 466-67 (11th Cir. 1996).

In this case, Appellant's claims arise out of the dismissal of his state court action wherein he challenged the right of government officers to condemn his real property. Appellant pursued his claims to the appellate level before government officers foreclosed and then demolished his real property. Instead of raising any additional claims based upon the destruction of his property, Appellant waited 11 months until his state court action was dismissed. Appellant then proceeded to federal court to raise federal constitutional claims based upon the destruction of his property. Appellant is barred, however, from raising these claims in federal court because he had a reasonable opportunity to raise them in state court and they are inextricably intertwined with the state court judgment.

AFFIRMED.

APPENDIX C -
EXCERPTS OF DOCKET SHEET FOR CASE OF UNITED STATES V. GEORGIA, ET AL.

Docket for 04-1203

No. 04-1203
Vide: 04-1236
Title: United States, Petitioner
v.
Georgia, et al.
Docketed: March 9, 2005
Lower Ct: United States Court of Appeals for the Eleventh Circuit
Case Nos.: (02-10168-GG)
Decision Date: September 16, 2004
Rehearing Denied: December 9, 2004
Questions Presented

--------Date------	----------Proceedings and Orders ----------
Mar 9 2005	Petition for a writ of certiorari filed. (Response due April 8, 2005)
Mar 23 2005	Waiver of right of respondent Tony Goodman to respond filed.
Mar 31 2005	Order extending time to file response to petition to and including April 15, 3005.
Apr 15 2005	Brief of respondents Georgia, et al. In opposition filed. VIDED.
Apr 25 2005	Reply of petitioner United States filed.
Apr 26 2005	DISTRIBUTED for Conference of May 12, 2005.
May 9 2005	DISTRIBUTED for Conference of May 12, 2005.
May 16 2005	May 16, 2005 Petition GRANTED. The case is consolidated with No. 04-1236 and a total of one hour is allotted for oral argument.

. . .

Jan 10 2006	Judgment REVERSED and case REMANDED Scalia, J., delivered the opinion for a unanimous Court. Stevers, J., filed a concurring opinion, in which Ginsburg, J., joined.

...

APPENDIX D -

[RECEIVED JAN 6-2006 OFFICE OF THE CLERK SUPREME COURT, U.S.]

NO. 05-637

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2005

IRENE L. STEPHENS,

Petitioner,

vs.

GEORGIA DEPARTMENT OF TRANSPORTATION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITIONER'S MOTION TO CONSOLIDATE CASE WITH THE CASE OF MARSHALL v. MARSHALL, NO. 04-1544

Irene L. Stephens
1409 Back Cove Road
Virginia Beach, VA 23454
(757) 332-0636

QUESTIONS PRESENTED

1. WHETHER THE DISTRICT COURT FAILED TO ADJUDICATE THE PETITIONER'S CASE AND CLAIMS PROPERLY.

2. WHETHER THE DISTRICT COURT WAS REQUIRED TO HONOR THE JUDICIAL DETERMINATIONS AS MADE AND RENDERED BY THE GEORGIA DEPARTMENT OF LABOR AGAINST THE RESPONDENT IN THE PETITIONER'S FAVOR.

3. WHETHER THE ELEVENTH CIRCUIT COURT OF APPEALS SHOULD HAVE REVERSED THE JUDGMENT OF THE DISTRICT COURT.

4. WHETHER, UNDER THE CIRCUMSTANCE, EVIDENCE AND FACTS OF THE CASE, WOULD O.C.G.A. § 34-8-223(a) AND/OR O.C.G.A. § 34-8-223(b) PROVIDE AN EXCEPTION TO TITLE 28 U.S.C. § 1738.

5. WHETHER OR NOT UNDER THE CIRCUMSTANCES, EVIDENCE AND FACTS OF THIS CASE DOES CONFIDENTIALITY EXIST AT THE TIME AN EMPLOYER SCHEDULES AN APPOINTMENT WITH A LICENSED HEALTH CARE PROVIDER, AND THE PROVIDER AGREES TO ACCEPT PAYMENT FOR THE SERVICES TO BE

RENDERED TO THE EMPLOYEE UNDER AND PURSUANT TO THE EMPLOYEES HEALTH INSURANCE COVERAGE.

6. DID THE GEORGIA ATTORNEY GENERAL AND THE OFFICE OF THE ATTORNEY GENERAL EXCEED THE LIMIT OF THE POLICE POWERS OF THE STATE CONFERRED UPON THE STATE BY THE TENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND O.C.G.A. § 34-8-2 OR THE CONSTITUTION OF THE STATE OF GEORGIA

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RELEVANT PROCEEDINGS

The judgment of the Eleventh Circuit Court of Appeals in Atlanta, Georgia was entered on May 31, 2005. Petitioner sought a timely rehearing of the decision by the panel and sought an en banc determination which was denied on August 17, 2005.

Petitioner filed Petition for Writ of Certiorari on November 14, 2005 and was placed on the docket November 18, 2005 as No. 05-637. The due date for a brief in opposition was December 19, 2005. On December 14, 2005 the Respondents counsel filed a waiver with the court intending not to file a response on behalf of the Respondent, at least three days early. The instant case is scheduled for conference on January 6, 2006.

STATEMENT OF THE REASONS FOR GRANTING PETITIONERS MOTION TO CONSOLIDATE CASE WITH MARSHALL V. MARSHALL, NO. 04-1544

Like the Marshall case Petitioner advances the instant case also has many of the same underlying issues that are crucial to the foundation of jurisprudence in this Republic including the balance of power between the state and federal courts:

A. The Georgia Attorney General and The Office Of The Attorney General of Georgia and Its Suppression of Evidence In The Instant Case Below.

On or about June 19, 2003, during the proceeding of the instant case at the United States District Court in Atlanta, Georgia, Petitioner telephoned the Respondent's former counsel at the Office of the Attorney General of Georgia. At the same time, Petitioner requested a copy of the Employee Handbook, which was issued to Petitioner at the time that the Respondent hired Petitioner under and pursuant to its terms. Presently, the Respondent's former attorney fraudulently advanced and stated, " We did not have a copy of that employee handbook it was not retained by the Defendant." The

Respondent's former counsel pursuant to the Petitioner's discovery request tendered two of the Respondent's employment handbooks of January, 2002 and November, 2003 of no legal existence during Petitioners employment with the Respondent.[1]

The failure and/or refusal of the Respondent and Respondent's counsel to preserve and provide the Petitioner with the Petitioner's employee handbook as Respondent provided the Petitioner during the Petitioners employment with Respondent at the Federal District Court in Georgia is direct evidence of suppression of evidence in the instant case by the Georgia Attorney General and the Office of the Attorney General of Georgia, has resulted in at a minimum fraud against the Petitioner:

- Constructive Fraud, 38 Cal. Rpt. 148, 157. See 437

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1. Petitioner 1994 DOT Employee Handbook is located at: R4-73, Exhibits A and B as attached thereto.

S.W.2d 20, 28

- Extrinsic Fraud. 468 S.W. 2d 160, 163. See 247 P.2d 801, 803

- Fraud in the Factum. 5 S.E 2d 138, 141.

It is the Petitioner's contention that the decisions of the federal court's in Georgia could not have been issued on the merits of the case without the evidence suppressed by the Georgia Attorney General and the Office of the Attorney General of Georgia and other evidence stricken from the record by the lower court's in Georgia.

It is the Petitioner's contention that O.C.G.A. § 34-8-222(b)[2] barred the Atlanta, Georgia Federal Courts ruling in

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[2] (b) Within 15 days after the decision of the board of review has become final, any party aggrieved thereby may secure judicial review by filing a petition against the Commissioner in the superior court of the county where the employee was last employed. In the event the individual was last employed in another state, such appeal shall be filed in Fulton County, Georgia. Any other party to the proceeding before the board of review shall be made a respondent. The petition, which need not be verified but which shall state specifically the grounds upon which a review is sought, shall

favor of the Respondent in the instant case. A Respondent-Defendant employer may not lose a State employment appeal

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be served upon the Commissioner or upon such person as the Commissioner may designate, and such service shall be deemed completed service on all parties, but there shall be left with the party so served as many copies of the petition as there are respondents. The Commissioner shall mail one such copy to each such respondent. Within 30 days after the service of the petition, the Commissioner shall certify and file with the superior court all documents and papers and a transcript of all testimony taken in the matter, together with the board of review's findings of fact and decision therein. The Commissioner shall not be required to furnish any person with a copy of the aforementioned documents, papers, or transcripts or the original of these items prior to the Commissioner's filing these items with the court. The Commissioner may also, in his or her discretion, certify to such court questions of law involved in any decision. As a guide for future interpretation of the law, when the Commissioner is aggrieved by any decision of the board of review or deems such decision contrary to the law and no other party enters an appeal therefrom, the Commissioner may, within 20 days after such decision has become final, appeal and certify to the superior court questions of law therein involved. The court shall consider and determine the same and enter a decree accordingly, which shall be subject to further appeal by the Commissioner. In any judicial proceeding under this Code section, the **findings of the board of review as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the court shall be confined to questions of law**. Such actions and the questions so certified shall be heard in a summary manner and shall be given precedence over all other civil cases except cases to which the state is a material party and cases arising under Chapter 9 of this title.

case, file no appeal of the same and later in the instant case below commit fraud by way of the Respondent's former counsel, denying the Petitioner due process, so as to aid the Respondent to avoid legal liability of the Respondent's conduct, as committed against the Petitioner with the expectancy of the federal judiciary to reverse the settled findings of fact in favor of the Petitioner. In the philosophy of Kant, a contradiction in thought, unavoidable by the reason alone. Moreover, the procedural posture of the Respondent, the suppression of evidence by the Georgia Attorney General and the Office of the Attorney General of Georgia and the resulting federal court judgments in favor of the Respondent-Defendant is an antinomy of the foundation of this Republics jurisprudence. More than one-hundred and eighty years ago this Court explained:

> "The general rule implemented by the full faith and credit statute - - that parties should not be permitted to relitigate issues that have been resolved by courts of competent jurisdiction - - predates the republic. It "has

> found its was into every system of jurisprudence, not only from its obvious fitness and propriety, but because without it, an end could never be put to litigation." **Hopkins v. Lee**, 6 Wheat. 109 (1821).

It is the Petitioner's contention the doctrines of res judicata and collateral estoppel, applicable through Title 28 U.S.C. § 1738, protect the finality of prior judgments and judicial determinations. The instant case is another clear illustration of the reasons for these doctrines. As the Court has very recently explained:

> 28 § 1738 requires federal courts to give preclusive effect to any state court judgment that would have preclusive effect under the laws of the State in which the judgment was rendered . . . This statute has long been understood to encompass the doctrines of res *judicata*, or "claim preclusion," and collateral estoppel, or "issue preclusion." See **Allen v. McCurry**, 449 U.S. 90, 94-96 (1980).

This Court has said in the case of **Riggins v. Nevada**:

> "bad-faith failure to preserve potentially useful evidence constitutes a due process violation"[3]

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3. **Riggins v. Nevada**, 504 U.S. 127 (112 S.Ct. 1810, 1817, 118 L.Ed.2d 479). Quoting **Arizona v. Youngblood**, 488 U.S.

The Georgia Appeals Court said in the case of **Dodd v. City of Gainsville** :

> "As the trial court noted in it's order, where the parties have equal opportunities for knowing the truth,'a party grossly failing to inform himself must take the consequences of his neglect."[4]

The Georgia Court of Appeals has said in the case of **Clark v. State**:

> "The Supreme Court held in **Ashe** that the Fifth Amendment guarantee against double jeopardy embodies collateral estoppel as a constitutional requirement. And the protections afforded by the double jeopardy clause are binding upon the states through the Fourteenth Amendment. **Benton v. Maryland**, 395 U.S. 784 (89 SC 2056, 23 L.Ed.2d 707)." [5]

This Court has said in the case of **Hafer v. Melo et al.**

> "That contention ignores this Court's holding that §

51, 58 (109 S.Ct. 333, 333, 102 L.Ed. 2d 281 (1988)

4. Citing **Dodd v. City of Gainsville**, 250 Ga. App. 722 (2001)

5. Citing **Clark v. State**, 194 Ga. App. 280, 281 (1990) 390 S.E.2d 425. Quoting **Ashe v. Swenson**, 397 U.S. 436 (90 S.Ct. 1189, 1190, 25 L.Ed.2d 469 (1970) and **Benton v. Maryland**, 395 U.S. 784 (89 S.Ct. 2056, 2057, 23 L.Ed.2d 707).

1983 was enacted to enforce provision of the Fourteenth Amendment against those who carry a badge of a State and represent it in some capacity whether they act in accordance with their authority or misuse it. **Scheuer v. Rhodes**, 416 U.S. 232, 243." See **Hafer v. Melo et al.**, 502 U.S. 21 (1991), No. 90-681.

B. The District Court never conducted an evidentiary hearing and severely circumscribed the Petitioner's presentation of evidence and enjoined the Petitioner

The District Court never conducted an evidentiary hearing to establish respondent's discovery abuses the court simply accepted the unsubstantiated, untrue, and contested accusations of the Respondent's counsel and witnesses as truthful facts. Additionally, without conducting any hearing whatsoever the District Court severely circumscribed the Petitioner's presentation of evidence by striking the Bankruptcy files of two (2) of the Respondent's employee's and other portions of the record from the record. And asserting its own jurisdiction, the district court conducted a "de novo" review of the settled findings of fact of the

Petitioner's employment appeal case.

C. Nowhere in its May 31, 2005, eleven (11) page opinion of the instant case below does the United States Court of Appeal for the Eleventh Circuit cite or discuss the statutory grant of federal question jurisdiction (28 U.S.C. § 1331), to the federal court.

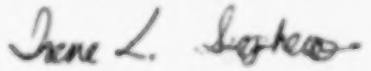
CONCLUSION

The issues of direct estoppel, Rooker-Feldman Doctrine, Title 28 U.S.C. § 1738 were raised by Petitioner on direct review both below and before the Honorable Court. The instant case may be one of first impression for the Honorable Court applying Rooker-Feldman Doctrine merged for a Petitioner-Plaintiff-Claimant.

Petitioner's contention the court's decision to be rendered in Marshall v. Marshall is crucial to the court's determination in the instant case. The Petitioner respectfully request the Honorable Court to grant this motion and Pursuant to Title 28 U.S.C § 1254(1) grant Petitioner's writ

of certiorari followed by reversal and remand to the United States Court of Appeals for the Eleventh Circuit for further consideration and/or a grant of equitable relief from the Honorable Court.

Respectfully submitted,



Irene L. Stephens
1409 Back Cove Road
Virginia Beach, VA 23454
(757) 332.0636

CERTIFICATION OF COMPLIANCE WITH RULE 21

Petitioner, Irene L. Stephens, hereby certifies that this Motion is limited to intervening circumstances of substantial or controlling effect and otherwise is in compliance with Rule 21 and 27.3, and is presented in good faith and not for delay.

Irene L. Stephens

Irene L. Stephens
1409 Back Cove Road
Virginia Beach, VA 23454
(757) 332.0636

CERTIFICATION OF SERVICE AND VERIFICATION

Pursuant to Supreme Court Rules 27.3, 29 and 33.2 and Title 28, U.S.C. Section 1746, I hereby state that I have this day served one (1) copy of PETITIONER'S MOTION TO CONSOLIDATE CASE WITH THE CASE OF MARSHALL v. MARSHALL, NO. 04-1544, at the time of filing upon G.Melton Mobley, Jr, Lokey, Mobley & Doyle, L.L.C., 8425 Dunwoody Place, Atlanta, GA 30350, by placing a copy of the same into an envelope with no less than first-class postage prepaid to ensure delivery and placing the same into the United States Postal Service on this 4th day of January, 2006.

Irene L. Stephens
Affiant

Irene L. Stephens
1409 Back Cove Road
Virginia Beach, VA 23454

APPENDIX E -
DECEMBER 29, 2005 LETTER TO PETITIONER FROM C. VASIL, CHIEF DEPUTY CLERK SUPREME COURT OF THE UNITED STATES

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

December 29, 2005

Ms. Irene L. Stephens
1409 Back Cove Road
Virginia Beach, VA 23454

Re: Irene L Stephens
v. Georgia Department of Transportation
No. 05-637

Dear Ms. Stephens:

The motion to defer consideration of the above-entitled petition for a writ of certiorari was received December 27, 2005, and is herewith returned. The Court does not make public that a pending case is being held for a case in which certiorari was granted, nor does the Court act on motions to hold a case for a granted case.

Sincerely,
WILLIAM K. SUTER, Clerk

By
s/
Christopher W. Vasil
Chief Deputy Clerk

cc: G. Melton Mobley

APPENDIX F -

[RECEIVED DECEMBEk 27, 2005 OFFICE OF THE CLERK SUPREME COURT, U.S.]

NO. 05-637

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2005

IRENE L. STEPHENS,

Petitioner,

vs.

GEORGIA DEPARTMENT OF TRANSPORTATION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITIONER'S MOTION FOR CASE TO BE CONTINUED PENDING THE COURTS DECISION OF MARSHALL v. MARSHALL, NO. 04-1544

Irene L. Stephens
1409 Back Cove Road
Virginia Beach, VA 23454
(757) 332-0636

QUESTIONS PRESENTED

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2. WHETHER THE DISTRICT COURT WAS REQUIRED TO HONOR THE JUDICIAL DETERMINATIONS AS MADE AND RENDERED BY THE GEORGIA DEPARTMENT OF LABOR AGAINST THE RESPONDENT IN THE PETITIONER'S FAVOR.

3. WHETHER THE ELEVENTH CIRCUIT COURT OF APPEALS SHOULD HAVE REVERSED THE JUDGMENT OF THE DISTRICT COURT.

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Like the Marshall case Petitioner advances the instant

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The failure and/or refusal of the Respondent and Respondent's counsel to preserve and provide the Petitioner with the Petitioner's employee handbook as Respondent provided the Petitioner during the Petitioners employment with Respondent at the Federal District Court in Georgia is direct evidence of suppression of evidence in the instant case by the Georgia Attorney General and the Office of the Attorney General of Georgia, has resulted in at a minimum fraud against the Petitioner:

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- Extrinsic Fraud. 468 S.W. 2d 160, 163. See 247 P.2d 801, 803

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1. .Petitioner 1994 DOT Employee Handbook is located at: R4-73, Exhibits A and B as attached thereto.

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It is the Petitioner's contention that O.C.G.A. § 34-8-222(b)[2] barred the Atlanta, Georgia Federal Courts ruling in

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[2] (b) Within 15 days after the decision of the board of review has become final, any party aggrieved thereby may secure judicial review by filing a petition against the Commissioner in the superior court of the county where the employee was last employed. In the event the individual was last employed in another state, such appeal shall be filed in Fulton County, Georgia. Any other party to the proceeding before the board of review shall be made a respondent. The petition, which need not be verified but which shall state specifically the grounds upon which a review is sought, shall be served upon the Commissioner or upon such person as the Commissioner may designate, and such service shall be deemed completed service on all parties, but there shall be left with the party so served as many copies of the petition as there are respondents. The Commissioner shall mail one such copy to each such respondent. Within 30 days after the service of the petition, the Commissioner shall certify and file with the superior court all documents and papers and a transcript of all testimony taken in the matter, together with the board of review's findings of fact and decision therein. The Commissioner shall not be required to furnish any person with a copy of the aforementioned documents, papers, or transcripts or the original of these items prior to the Commissioner's filing these items with the court. The Commissioner may also, in his or her discretion, certify to such court questions of law involved in any decision. As a guide for future interpretation of the law, when the Commissioner is aggrieved by any decision of the board of review or deems such decision contrary to the law and no other party enters an appeal therefrom, the Commissioner may, within 20 days after such decision has become final, appeal and certify to the superior court questions of law therein involved. The court shall consider and determine the

favor of the Respondent in the instant case. A Respondent-Defendant employer may not lose a State employment appeal case, file no appeal of the same and later in the instant case below commit fraud by way of the Respondent's former counsel, denying the Petitioner due process, so as to aid the Respondent to avoid legal liability of the Respondent's conduct, as committed against the Petitioner with the expectancy of the federal judiciary to reverse the settled findings of fact in favor of the Petitioner. In the philosophy of Kant, a contradiction in thought, unavoidable by the reason alone. Moreover, the procedural posture of the Respondent, the suppression of evidence by the Georgia Attorney General and the Office of the Attorney General of Georgia and the

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same and enter a decree accordingly, which shall be subject to further appeal by the Commissioner. In any judicial proceeding under this Code section, the **findings of the board of review as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the court shall be confined to questions of law**. Such actions and the questions so certified shall be heard in a summary manner and shall be given precedence over all other civil cases except cases to which the state is a material party and cases arising under Chapter 9 of this title.

resulting federal court judgments in favor of the Respondent-Defendant is an antinomy of the foundation of this Republics jurisprudence. More than one-hundred and eighty years ago this Court explained:

> "The general rule implemented by the full faith and credit statute - - that parties should not be permitted to relitigate issues that have been resolved by courts of competent jurisdiction - - predates the republic. It "has found its was into every system of jurisprudence, not only from its obvious fitness and propriety, but because without it, an end could never be put to litigation." **Hopkins v. Lee**, 6 Wheat. 109 (1821).

It is the Petitioner's contention the doctrines of res judicata and collateral estoppel, applicable through Title 28 U.S.C. § 1738, protect the finality of prior judgments and judicial determinations. The instant case is another clear illustration of the reasons for these doctrines. As the Court has very recently explained:

> 28 § 1738 requires federal courts to give preclusive effect to any state court judgment that would have preclusive effect under the laws of the State in which the judgment was rendered . . . This statute has long been understood to encompass the doctrines of res *judicata* , or "claim preclusion," and collateral estoppel, or "issue preclusion." See **Allen v. McCurry**, 449 U.S. 90, 94-96 (1980).

This Court has said in the case of **Riggins v. Nevada**:

"bad-faith failure to preserve potentially useful evidence constitutes a due process violation"[3]

The Georgia Appeals Court said in the case of **Dodd v. City of Gainsville** :

"As the trial court noted in it's order, where the parties have equal opportunities for knowing the truth,'a party grossly failing to inform himself must take the consequences of his neglect."[4]

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> "The Supreme Court held in **Ashe** that the Fifth Amendment guarantee against double jeopardy embodies collateral estoppel as a constitutional requirement. And the protections afforded by the double jeopardy clause are binding upon the states through the Fourteenth Amendment. **Benton v.**

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3. **Riggins v. Nevada**, 504 U.S. 127 (112 S.Ct. 1810, 1817, 118 L.Ed.2d 479). Quoting **Arizona v. Youngblood**, 488 U.S. 51, 58 (109 S.Ct. 333, 333, 102 L.Ed. 2d 281 (1988)

4. Citing **Dodd v. City of Gainsville**, 250 Ga. App. 722 (2001)

Maryland, 395 U.S. 784 (89 SC 2056, 23 L.Ed.2d 707)." [5]

This Court has said in the case of **Hafer v. Melo et al.**

"That contention ignores this Court's holding that § 1983 was enacted to enforce provision of the Fourteenth Amendment against those who carry a badge of a State and represent it in some capacity whether they act in accordance with their authority or misuse it. **Scheuer v. Rhodes**, 416 U.S. 232, 243." See **Hafer v. Melo et al.**, 502 U.S. 21 (1991), No. 90-681.

B. The District Court never conducted an evidentiary hearing and severely circumscribed the Petitioner's presentation of evidence

The District Court never conducted an evidentiary hearing to establish respondent's discovery abuses the court simply accepted the unsubstantiated, untrue, and contested accusations of the Respondent's counsel and witnesses as truthful facts. Additionally, without conducting any hearing whatsoever the District Court severely circumscribed the Petitioner's presentation of evidence by striking the

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5. Citing **Clark v. State**, 194 Ga. App. 280, 281 (1990) 390 S.E.2d 425. Quoting **Ashe v. Swenson**, 397 U.S. 436 (90 S.Ct. 1189, 1190, 25 L.Ed.2d 469 (1970) and **Benton v. Maryland**, 395 U.S. 784 (89 S.Ct. 2056, 2057, 23 L.Ed.2d 707).

Bankruptcy files of two (2) of the Respondent's employee's and other portions of the record from the record. And asserting its own jurisdiction, the district court conducted a "de novo" review of Petitioner's employment appeal case.

C. Nowhere in its May 31, 2005, eleven (11) page opinion of the instant case below does the United States Court of Appeal for the Eleventh Circuit cite or discuss the statutory grant of federal question jurisdiction (28 U.S.C. § 1331), to the federal court.

D. Ensure that valid State judgments are given and granted the proper legal consideration when subsequent legal claims, as based upon the prior State legal judgement are raised in the federal courts.

CONCLUSION

The issues of res judicata, collateral estoppel, Rooker-Feldman Doctrine, Title 28 U.S.C. § 1738 were raised by Petitioner on direct review both below and before the Honorable Court. It is the Petitioner's contention the court's decision to be rendered in Marshall v. Marshall would be crucial to the court's determination in the instant

case. And the instant case may be one of first impression for the Honorable Court applying Rooker-Feldman, res judicata, collateral estoppel, Title 28 U.S.C. § 1738 to the Respondent-Defendant-State vs. the prior Rooker-Feldman cases involving multiple cases involving Plaintiff's and the now pending Marshall case involving multiple cases of a Petitioner.

At a minimum, a final decision of petitioner's certiorari petition should await final disposition of the now pending Marshall v.Marshall case, and pursuant to Title 28 U.S.C § 1254(1) grant Petitioner's writ of certiorari followed by reversal and remand to the United States Court of Appeals for the Eleventh Circuit for further consideration and/or a grant of equitable relief from the Honorable Court.

Respectfully submitted,

Irene L. Stephens

Irene L. Stephens
1409 Back Cove Road
Virginia Beach, VA 23454
(757) 332.0636

CERTIFICATION OF COMPLIANCE WITH RULE 21

Petitioner, Irene L. Stephens, hereby certifies that this Motion is limited to intervening circumstances of substantial or controlling effect and otherwise is in compliance with Rule 21, and is presented in good faith and not for delay.

Irene L. Stephens

Irene L. Stephens
1409 Back Cove Road
Virginia Beach, VA 23454
(757) 332.0636

CERTIFICATION OF SERVICE AND VERIFICATION

Pursuant to Supreme Court Rules 29 and 33.2 and Title 28, U.S.C. Section 1746, I hereby state that I have this day served one (1) copy of PETITIONER'S MOTION FOR CASE TO BE CONTINUED PENDING THE COURTS DECISION OF MARSHALL v. MARSHALL, NO. 04-1544, at the time of filing, upon G.Melton Mobley, Jr, Lokey, Mobley & Doyle, L.L.C., 8425 Dunwoody Place, Atlanta, GA 30350, by placing a copy of the same into an envelope with no less than first-class postage prepaid to ensure delivery and placing the same into the United States Postal Service on this 27th day of December, 2005.

Irene L. Stephens
Affiant

Irene L. Stephens
1409 Back Cove Road
Virginia Beach, VA 23454

APPENDIX G - EXCERPTS OF DOCKET SHEET FOR CASE OF RIDEOUT V. UNITED STATES

Docket for 03-9402

No. 03-9402
Title: Kevin A. Rideout, Petitioner
v.
United States.
Docketed: March 17, 2004
Lower Ct: United States Court of Appeals for the Fourth Circuit
Case Nos.: (02–4302)
Decision Date: November 13, 2003
Rehearing Denied: December 12, 2003

--------Date------	------Proceedings and Orders ----------
Mar 11 2004	Petition for a writ of certiorari and motion for leave to proceed in forma pauperis filed. (Response due April 16, 2004)
Apr 7 2004	Order extending time to file response to petition to and including May 17, 2004.
May 12 2004	Order further extending time to file response to petition to and including May 28, 2004.
May 27 2004	Brief of respondent United States in opposition filed.
Jun 9 2004	DISTRIBUTED for Conference of June 24, 2004.
Jun 28 2004	Petition DENIED.
Jul 23 2004	Petition for Rehearing filed.
Jul 29 2004	Application (04A99) to suspend the effect of the denial of the petition for a writ of certiorari, submitted to The Chief Justice.
Jul 30 2004	Application (04A99) denied by The Chief Justice.

Sep 20	2004	DISTRIBUTED for Conference of September 27, 2004.
Jan 18	2005	DISTRIBUTED for Conference of January 21, 2005.
Jan 24	2005	Motion to proceed in forma pauperis and petition for rehearing GRANTED. The order entered June 28, 2004, denying the petition for a writ of certiorari is vacated. The petition for a writ of certiorari is granted. Judgment VACATED and case REMANDED for further consideration in light of United States v. Booker, 543 U.S _____ (2005).
Feb 25	2005	JUDGMENT ISSUED.
Apr 4	2005	Acknowledgment of receipt (03/01/05) of judgment from Clerk, United States Court of Appeals for the Fourth Circuit received.

. . .

APPENDIX H - EXCERPTS OF DOCKET SHEET FOR CASE OF UNITED STATES V. BOOKER

Docket for 04-104

No. 04-104
Title: United States, Petitioner
v.
Freddie J. Booker
Docketed: July 21, 2004
Lower Ct: United States Court of Appeals for the Seventh Circuit
Case Nos.: (03-4225)
Decision Date: July 9, 2004
Questions Presented

--------Date------	-------Proceedings and Orders ----------
Jul 21 2004	Petition for a writ of certiorari filed. (Response due July 28, 2004)
. . .	
Jan 12 2005	Judgment is AFFIRMED and case REMANDED. Stevens, J., delivered the opinion fo the Court in part, in which Scalia, Souter, Thomas, and Ginsburg, JJ., joined. Breyer, J., delivered the opinion of the Court in part, in which Rehnquist, C. J., and O'Connor, Kennedy, and Ginsburg, JJ., joined. Stevens, J., filed an opinion dissenting in part, in which Souter, J., joined, and which Scalia, J., joined except for Part III and dissenting in part, in which Rehnquist, C.J., and O'Connor and Kennedy, JJ., joined.
Feb 14 2005	JUDGMENT ISSUED
. . .	

APPENDIX I -
EXCERPTS OF DOCKET SHEET FOR CASE OF UNITED STATES V. FANFAN

Docket for 04-105

No. 04-105
Title: United States, Petitioner
v.
Duncan Fanfan
Docketed: July 21, 2004
Lower Ct: United States Court of Appeals for the First Circuit
Case Nos.: (04-1946)
Rule 11
Questions Presented

--------Date------	--------Proceedings and Orders ----------
Jul 21 2004	Petition for a writ of certiorari filed. (Response due July 28, 2004)
. . .	
Jan 12 2005	Judgment is VACATED and case REMANDED. Stevens, J., delivered the opinion fo the Court in part, in which Scalia, Souter, Thomas, and Ginsburg, JJ., joined. Breyer, J., delivered the opinion of the Court in part, in which Rehnquist, C. J., and O'Connor, Kennedy, and Ginsburg, JJ., joined. Stevens, J., filed an opinion dissenting in part, in which Souter, J., joined, and in which Scalia, J., joined except for Part III and footnote 17. Scalia, J. and Thomas, J., filed opinions dissenting in part. Breyer, J., filed an opinion dissenting in part, in which Rehnquist, C.J., and O'Connor and Kennedy, JJ., joined.
Feb 14 2005	JUDGMENT ISSUED.
. . .	
Feb 14 2005	JUDGMENT ISSUED

APPENDIX J -
EXCERPTS OF DOCKET SHEET FOR CASE OF UNITED STATES V. PENARANDA

Docket for 04-59

No. 04-59
Title: United States, Petitioner
v.
Hector Penaranda and Luis Rojas
Docketed: July 13, 2004
Lower Ct: United States Court of Appeals for the Second Circuit
Case Nos.: (03-1055 (L), 03-1062 (L))
Decision Date: July 12, 2004

--------Date------	--------Proceedings and Orders ----------
Jul 13 2004	Certified questions filed.
Jul 15 2004	Record received from U.S.C.A. 2nd Circuit. (1 box)
Jan 18 2005	DISTRIBUTED for Conference of January 21, 2005.
Jan 24 2005	The question certified by the United States Court of Appeals for the Second Circuit is dismissed.
Oct 4 2005	Record returned to U.S.C.A.-Second Circuit

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